

Applicant Details

First Name **Laith**
 Middle Initial **M.**
 Last Name **Adawiya**
 Citizenship Status **U. S. Citizen**
 Email Address lmadawiya@ucdavis.edu

Address

Address
Street
8 El Vado Drive
City
Rancho Santa Margarita
State/Territory
California
Zip
92688
Country
United States

Contact Phone Number **(949)-973-8101**

Applicant Education

BA/BS From **University of California-Los Angeles**
 Date of BA/BS **June 2021**
 JD/LLB From **University of California, Davis School of Law (King Hall)**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90502&yr=2011
 Date of JD/LLB **May 11, 2024**
 Class Rank **Below 50%**
 Law Review/Journal **Yes**
 Journal(s) **Journal of International Law and Policy
Business Law Journal**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Neumiller Moot Court Competition
ABA National Appellate Advocacy Competition
Appellate Advocacy I & II**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Tang, Aaron
aatang@ucdavis.edu
Wagner, Ryan
ddawagner@ucdavis.edu
Canzoneri, Michael
macanzoneri@ucdavis.edu
Joseph, Jeannie
jjoseph@occourts.org

References

(1.) Judge Jeannie Joseph - (jjoseph@occourts.org) - (657) 622-5252
(2.) Professor Michael Canzoneri - (macanzoneri@ucdavis.edu) -
(916) 990-5902 (3.) Professor Aaron Tang - (aatang@ucdavis.edu) -
(530) 752-1476 (Note: Each reference's letter of recommendation has
been uploaded through OSCAR.)

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Cover Letter

Laith M. Adawiya

United States District Court – District of New Mexico
Pete V. Domenici United States Courthouse
333 Lomas Boulevard, N.W., Room 660
Albuquerque, NM 87102

Dear Judge Browning,

Please find attached my resume, writing sample, transcripts, and letters of recommendation for your review and consideration in connection with your Chamber's 2024 – 2025 Clerkship. I have just completed my second year at the UC Davis School of Law and am on track to graduate in the Spring of 2024. Following my graduation, I hope to fulfill my life-long career goal of working in public service. Towards that end, I believe that this Clerkship opportunity, and the experience it will provide me, will be the perfect first step in achieving that goal.

My passion for public service began in high school, when I came upon a speech given by Senator Robert F. Kennedy in Indianapolis following the assassination of Martin Luther King Jr. I was so struck by the eloquence and passion of his words – a call for peace and understanding between all Americans – that I decided to dedicate my professional life to public service; to pursue a career that, in the spirit of Senator Kennedy, attempts to help the poor and underprivileged. From a young age, my parents instilled in me the importance of integrity, justice, and the impartiality of law in society; and perhaps no institution is more dedicated to these ideals than the Judiciary.

As a District Court, your Chambers are at the forefront of debates regarding national matters, issuing rulings that will affect countless Americans. The areas in which the District Court of New Mexico engages – ranging from civil rights, to immigration, to administrative procedure – interest me tremendously. And as a law student, an aspiring public servant, and much more importantly, a fellow American, I hope to partake in that work; to aid in the process of ensuring that the Judiciary continues to commit itself towards that demanding, yet admirable goal of "Equal Justice Under the Law."

My studies and work experience thus far – outlined on the attached resume - have only served to strengthen my dedication to that cause, and I believe have prepared me well for this Clerkship opportunity. I am confident that you will find me to have a very strong work ethic, and who will support your Chambers reviewing trial records, researching applicable law, and drafting legal memoranda and court opinions among other things.

For those reasons, and more, it would be an honor to be selected for your Chamber's 2024 – 2025 Clerkship, and work alongside you and other dedicated professionals that share my passion for public service.

Please do not hesitate to contact me should you need any additional information. I thank you for your consideration, and look forward to hearing from you.

Sincerely,



Laith M. Adawiya

Email: lmadawiya@ucdavis.edu

Phone Number: (949)-973-8101

Laith M. Adawiya

Phone: (949) 973-8101
Email: lmadawiya@ucdavis.edu

Education

J.D. | Expected Graduation Date: May, 2024
University of California, Davis School of Law, CA 95616

B.A. in Political Science | Graduation Date: June, 2021
University of California, Los Angeles, CA 90095
Focus: American Politics
Minor: History
GPA: 3.918/4.00 – Magna Cum Laude

A.A. in Political Science | Graduation Date: May, 2019
Saddleback College, CA 92692
GPA: 4.00/4.00

Experience

Legal Intern | June 2023 – August 2023
Office of Legislative Counsel, Sacramento, CA 95814

- Provide legal advice to California State legislators regarding constitutional, administrative, and procedural matters
- Assist in the drafting of legislation for the California State Legislature

Superior Court Judicial Extern | June 2022 – August 2022
OC Superior Court, Orange County, CA 92701

- Observed OC Superior Court arraignments, trials, and other proceedings
- Discussed case issues with Judges and other Externs
- Completed legal memorandum as assigned by Judge

Undergraduate Reader | October 2020 – December 2020
University of California, Los Angeles, CA 90095

- Attended "Political Science 145B – Federalism and Separation of Powers" course
- Met with instructor and other readers to go over grading format and course logistics
- Graded student essays and submitted constructive comments

College Extern | June 2020 – September 2020
U.S. Attorney's Office, Los Angeles, CA 90012

- Aided Assistant U.S. Attorneys with projects and casework through research, organization, trial preparation, transcription, and analysis of evidence, requiring security clearance
- Attended various panels hosted by officials from different agencies and branches of government

Student Assistant | September 2019 – March 2020
UCLA School of Law, Los Angeles, CA 90095

- Aided faculty assistants in day-to-day affairs
- Assisted with word-processing, department events, and basic administrative and clerical duties
- Internet research, data entry, running of errands, etc.

Guest Service Representative | June 2017 - September 2019
Courtyard Marriott, Foothill Ranch, CA 92610

- Greeted, registered, and assigned rooms to guests
- Promptly and effectively dealt with guest requests and complaints
- Reconciled cash drawer contents with transactions during shift

Congressional Intern | October 2017 - August 2018
Congresswoman Mimi Walters, Irvine, CA 92612

- Answered phone calls from constituents
- Aided staffers in day-to-day affairs
- Helped prepare various events in California's 45th district (e.g. Congressional Art Competition, Military Academy Showcase)

Languages & Skills

Foreign Language: Arabic
Office Applications: Microsoft Word, PowerPoint, Excel, & Outlook
Research Tools: Internet Explorer, Microsoft Edge, Google Advanced Search
Editing Applications: Adobe Acrobat

Achievements & Activities

Civil Rights Clinic – Fall 2023
UC Davis Law

Moot Court Honors Board – 2023-Present
UC Davis Law

Moot Court Judge Recruitment Chair – 2023-Present
UC Davis Law

ABA National Appellate Advocacy Competition – Spring 2023
UC Davis Law

Moot Court – Spring 2022, Fall 2022, Spring 2023
UC Davis Law

King Hall Negotiations Team Member – 2023-Present
UC Davis Law

King Hall Negotiations Team Intraschool Competition – Spring 2023
UC Davis Law

Journal of International Law and Policy (Submissions Chair) – 2023-Present
UC Davis Law

Journal of International Law and Policy (Research Editor) – 2022-2023
UC Davis Law

Business Law Journal (Editor) – 2022-2023
UC Davis Law

King Hall International Law Association (Vice President) – 2022 - 2023
UC Davis Law

Dean's Honors List – Winter 2020, Spring 2020, Fall 2020, Winter 2021, Spring 2021
UCLA

Dean's List – Fall 2017, Spring 2018, Fall 2018, Spring 2019
Saddleback College

Honors Program – 2018 - 2019
Saddleback College

Volunteer Service

Yolo County Animal Shelter – 2022 - Present

UNOFFICIAL PAGE: 1

LAITH M. ADAWIYA

ID 920-258-398

PROFESSIONAL ACADEMIC RECORD

CURRENT COLLEGE(S): LAW
CURRENT MAJOR(S): LAW

ADMITTED: FALL SEMESTER 2021

INSTITUTION CREDIT:

FALL SEMESTER 2021						
LAW	200	INTRODUCTION TO LAW	S	1.00	.00	
LAW	202	CONTRACTS	B	4.00	12.00	
LAW	203	CIVIL PROCEDURE	B-	5.00	13.50	
LAW	207	RESEARCH & WRITING I	B	2.00	6.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	12.00	11.00	11.00	31.50	2.863	
UC CUM:	12.00	11.00	11.00	31.50	2.863	

SPRING SEMESTER 2022						
LAW	200L	LAWYERING PROCESS LAB	S	.00	.00	
LAW	200S	LAWYERING PROCESS	S	2.00	.00	
LAW	201	PROPERTY	B	4.00	12.00	
LAW	204	TORTS	B+	4.00	13.20	
LAW	205	CONSTITUTIONAL LAW I	A	4.00	16.00	
LAW	208	LGL RESRCH & WRITING II	B	2.00	6.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	16.00	14.00	14.00	47.20	3.371	
UC CUM:	28.00	25.00	25.00	78.70	3.148	

FALL SEMESTER 2022						
LAW	206	CRIMINAL LAW	A-	3.00	11.10	
LAW	227A	CRIMINAL PROCEDURE	B+	3.00	9.90	
LAW	252A	INTRO CRIM LITIGATION	A-	2.00	7.40	
LAW	282	ENERGY LAW	A	2.00	8.00	
LAW	288C	NATIONAL SECURITY LAW	A-	2.00	7.40	
LAW	410A	APPELLATE ADVOCACY I	S	2.00	.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	14.00	12.00	12.00	43.80	3.650	
UC CUM:	42.00	37.00	37.00	122.50	3.310	

SPRING SEMESTER 2023						
LAW	210J	BEST PRACT FOR JUSTICE	A	2.00	8.00	
LAW	219C	EVIDENCE	B-	4.00	10.80	
LAW	267	CIVIL RIGHTS LAW	A-	2.00	7.40	
LAW	296E	ART & CULTURAL LAW	A-	3.00	11.10	
LAW	410B	MOOT COURT	S	2.00	.00	
LAW	413	INTRSCHL COMPETITN	S	2.00	.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	15.00	11.00	11.00	37.30	3.390	
UC CUM:	57.00	48.00	48.00	159.80	3.329	

FALL SEMESTER 2023						
WORK IN PROGRESS:						
LAW	218	CONSTITUTIONAL LAW II			4.00	
LAW	235	ADMINISTRATIVE LAW			3.00	
LAW	246	FEDERAL JURISDICTION			3.00	
LAW	263A	TRIAL PRACTICE			3.00	
		IN PROGRESS CREDITS:		13.00		

***** CONTINUED ON NEXT COLUMN *****

LAITH M. ADAWIYA

CONTINUED

***** TRANSCRIPT TOTALS *****

TOTAL UNITS COMPLETED: 57.00 UC GPA: 3.329
UC BALANCE POINTS: 63.8

COMMENTS:
LAW WRITING REQUIREMENT SATISFIED - LAW 288C

***** MEMORANDA *****

UNIVERSITY REQUIREMENTS:

PREVIOUS DEGR:
BACHELOR OF ARTS 06/01/21
UC LOS ANGELES (UCLA)

END OF RECORD
UNOFFICIAL UC DAVIS TRANSCRIPT COMPUTER PRODUCED ON
06/03/23 - ISSUED TO STUDENT.

Student Copy / Personal Use Only | [205330834] [ADAWIYA, LAITH]

University of California, Los Angeles
 UNDERGRADUATE Student Copy Transcript Report
 Missing Valid Seal

For Personal Use Only

This is an **unofficial/student copy** of an academic transcript and therefore does not contain the university seal and Registrar's signature. Students who attempt to alter or tamper with this document will be subject to disciplinary action, including possible dismissal, and prosecution permissible by law.

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Student Information

Name: ADAWIYA, LAITH M
 UCLA ID: 205330834
 Date of Birth: 04/21/XXXX
 Version: 08/2014 | SAITONE
 Generation Date: February 15, 2022 | 12:00:37 PM
 This output is generated only once per hour. Any data changes from this time will be reflected in 1 hour.

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Program of Study

Admit Date: 09/23/2019
 COLLEGE OF LETTERS AND SCIENCE

Major:
 POLITICAL SCIENCE

Minor:
 HISTORY

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Degrees | Certificates Awarded

BACHELOR OF ARTS Awarded June 11, 2021
 in POLITICAL SCIENCE
 With a Minor in HISTORY
 Magna Cum Laude

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Secondary School

TESORO HIGH SCHOOL, June 2017

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

University Requirements

Entry Level Writing satisfied
 American History & Institutions satisfied

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

California Residence Status

Resident

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Student Copy / Personal Use Only | [205330834] [ADAWIYA, LAITH]

Transfer Credit

Institution

ADVANCED PLACEMENT

1 Term to 10/2019 Psd 28.0

IRVINE VALLEY COLLEGE

1 Term to 10/2019 4.5

SADDLEBACK COLLEGE

1 Term to 10/2019 87.0

Fall Quarter 2019

Major:

POLITICAL SCIENCE

US ECON-1790-1910

HIST 141A 4.0 14.8 A-

THE PRESIDENCY

POL SCI 140B 4.0 13.2 B+

SEPARATN OF POWERS

POL SCI 145B 4.0 16.0 A

Atm Psd Pts GPA
Term Total 12.0 12.0 44.0 3.667

Winter Quarter 2020

US ECON-1910-NOW

HIST 141B 4.0 16.0 A

PEACE AND WAR

POL SCI 126 4.0 14.8 A-

CONGRESS

POL SCI 140A 4.0 16.0 A

Dean's Honors List

Atm Psd Pts GPA
Term Total 12.0 12.0 46.8 3.900

Spring Quarter 2020

US CIVIL WAR&RECON

HIST 139A 4.0 16.0 A+

FOREIGN RELATION-US

POL SCI 120A 4.0 16.0 A

CIVIL LIBERTIES

POL SCI 145C 4.0 16.0 A+

Due to the COVID-19 pandemic, Passed/
Not Passed grading permitted for many
classes and degree requirements.

Dean's Honors List

Atm Psd Pts GPA
Term Total 12.0 12.0 48.0 4.000

Student Copy / Personal Use Only | [205330834] [ADAWIYA, LAITH]

Fall Quarter 2020

US THGHT 1620-1865	POL SCI 114A	4.0	14.8	A-	
PRES ELECTIONS	POL SCI 149	4.0	16.0	A	
CAREERS IN POLI SCI	POL SCI 149	4.0	16.0	A	
Due to the COVID-19 pandemic, Passed/ Not Passed grading permitted for many classes and degree requirements.					
Dean's Honors List					
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total		12.0	12.0	46.8	3.900

Winter Quarter 2021

RVLU AMER 1760-1800	HIST 138B	4.0	16.0	A+
SUPREME COURT	POL SCI 140C	4.0	16.0	A+
CLNLISM&DCRS&DMCRCY	POL SCI 163B	4.0	16.0	A+
Due to the COVID-19 pandemic, Passed/ Not Passed grading permitted for many classes and degree requirements.				
Dean's Honors List				
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	12.0	12.0	48.0	4.000

Spring Quarter 2021

INTRO TO ANIMATION	FILM TV C181A	5.0	20.0	A	
U S 1875-1900	HIST 139B	4.0	16.0	A	
REEL BEATLES	MSC IND 188	4.0	16.0	A+	
ACTING&PRFRMNC-FILM	THEATER 120C	5.0	20.0	A+	
Due to the COVID-19 pandemic, Passed/ Not Passed grading permitted for many classes and degree requirements. Dean's Honors List					
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total		18.0	18.0	72.0	4.000

UNDERGRADUATE Totals

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Pass/No Pass Total	0.0	0.0	N/a	N/a
Graded Total	78.0	78.0	N/a	N/a
Cumulative Total	78.0	78.0	305.6	3.918

Total Non-UC Transfer Credit Accepted 119.5
Total Completed Units 197.5

Student Copy / Personal Use Only | [205330834] [ADAWIYA, LAITH]

END OF RECORD
NO ENTRIES BELOW THIS LINE



June 20, 2023

Dear Judge:

I write in support of Laith Adawiya, a current 2L at the University of California, Davis School of Law (and member of the graduating class of 2024) who is applying for a clerkship in your chambers.

Laith was a student in my Constitutional Law class last spring, the second semester of his 1L year. He earned an A grade, with a raw score that placed him 6th of 66 students in the class. I found his essay responses to be very well written and reasoned, in a way that stood out to me even as I was grading (anonymously) for the quality of its prose and analytical clarity. Laith's overall participation over the semester was strong, too, as he frequently volunteered to respond to difficult questions in class. His responses to cold-calls were in the average range, as I found him to sometimes overcomplicate his analyses. But in the big picture, this is only a marginal concern: I believe he is capable of performing well in a clerkship.

In terms of Laith's potential fit in chambers, Laith consistently came across during the semester as an engaged and diligent student. I believe he would be eager to jump into any clerkship environment.

Please feel free to contact me with any questions.

Sincerely,

Aaron Tang
Professor of Law
UC-Davis School of Law
(530) 752-1476
aatang@ucdavis.edu



February 25, 2023

To Whom it May Concern,

We have had the privilege of teaching Laith Adawiya over the course of the last year. He has taken both our Introduction to Criminal Litigation course and our Best Practices for Justice seminar. Laith is a bright and hardworking law student who excelled in our classes.

He is a valuable contributor in discussions. During an intensive litigation course, Laith was adept at articulating and supporting his position. Perhaps even more impressive, Laith is equally adept at respectfully pushing back against opposing views and ensuring that the outcomes are fair and just. Laith is a strong and passionate candidate who will excel in his pursuit of what is right.

In addition to his participation in class, we have reviewed his legal writing abilities with the briefs he authored for our course. Laith is a fantastic writer. His work product is persuasive and extremely professional. As practicing prosecutors with over thirty years of combined legal experience, we are especially familiar with effective legal writing. Based on the materials we have reviewed, we believe Laith will excel as an advocate.

In summary, we recommend Laith Adawiya highly for the clerkship that he is seeking. He will make a fantastic addition to the program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Wagner".

Ryan Wagner
Adjunct Lecturer
UC Davis School of Law

A handwritten signature in blue ink, appearing to read "Brian Feinberg".

Brian Feinberg
Adjunct Lecturer
UC Davis School of Law

UNIVERSITY OF CALIFORNIA, DAVIS

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

June 20, 2023

Dear Judge,

I would like to express my support for Laith Adawiya's application for a clerkship position with either the State or Federal courts. I feel confident recommending Mr. Adawiya, who I know as Laith, for this position, based on my opportunity to see his work while coaching him, as a second-year law school competitor, in the prestigious American Bar Association National Appellate Advocacy Competition in 2023, and while seeing him perform in the Appellate Advocacy classroom series, during his second year of instruction.

Laith distinguished himself as an outstanding oral advocate, researcher, and team player, while participating in the Moot Court program at King Hall. He performed very well at the Los Angeles regional competition in the 2023 NAAC Competition as a 2-L, where he argued the complex issue of whether an academic freedom exception applied to a professor's classroom speech, which prevented a public university from disciplining the professor for espousing views contrary to the curriculum and values of the university. What I saw during that experience was his command of the courtroom, incredible knowledge of the law of the problem, and his natural ability to answer difficult questions. Laith is a powerful advocate who exudes great knowledge and confidence, while presenting a calm eloquence. But equally important, in the weeks prior to the February competition rounds, I saw that Laith was an incredibly hard worker, who thoughtfully and critically evaluated the strengths and weaknesses of his arguments as well as those of his opposing counsel. Laith has a great mind for the law, and during the competition he was exceptionally deft at responding the court panel's questions, respectfully and persuasively advocating for his side. Moreover, throughout the competition, Laith was respectful to his competitors and supportive of his teammates. During this experience, I was also fortunate to observe his wonderful sense of humor and his enthusiasm for the law and advocacy.

In sum, I believe Laith's great ability to research and synthesize the law, along with his skill as an oral advocate to explain complex legal principles, will make him an excellent addition to any Court's chambers. Also, I am confident that his comfortable style of working with others will allow him to blend in well with the Court's judges, attorneys and staff.

If I can answer any questions or otherwise assist you further in your evaluation of Laith's application, please do not hesitate to call upon me.

Sincerely,

Michael Canzoneri
Continuing Lecturer
UC Davis School of Law
400 Mrak Hall Drive
Davis CA, 95616
(916) 990-5902



Chambers of
JEANNIE M. JOSEPH
JUDGE
C52

Superior Court of California County of Orange

700 CIVIC CENTER DRIVE WEST
SANTA ANA, CA 92701
PHONE: 657-622-5251

June 20, 2023

To Whom It May Concern:

I am writing to recommend Laith Adawiya for a clerkship. Mr. Adawiya served as my extern during the summer of 2022 when he was a 1L. Mr. Adawiya was not only diligent, inquisitive, and hardworking, but he demonstrated excellent legal skills.

Over the course of the summer, Mr. Adawiya researched a number of legal issues that arose in criminal trials over which I presided. One issue was application of the new law on preemptory challenges in a criminal jury trial, how it differed from the prior state of the law, and the effects this law could have in the future. His work product was consistently thorough, well-researched, well-written, and well-thought out. His legal analysis was on point.

In addition, Mr. Adawiya was always keen to learn new things. He met all assignments with enthusiasm, embracing the opportunity to broaden his legal horizons. He took advantage of every opportunity to view all aspects of the justice system, including trials, preliminary hearings, law and motion, and calendar courts on the criminal side, as well as civil and family court matters.

Finally, Mr. Adawiya's personality made him a noteworthy extern. He was professional in interacting with everyone at the courthouse, including judges, attorneys, and staff. He was well-liked by everyone with whom he worked. He was simply a pleasure to have.

In sum, Mr. Adawiya is a stellar candidate for a clerkship, and I cannot recommend him highly enough. Please do not hesitate to contact me at (657) 622-5252 if you need more information.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Joseph", written over a horizontal line.

Jeannie M. Joseph
Judge, Orange County Superior Court

Writing Sample #1**Laith M. Adawiya****ABA National Appellate Advocacy Competition Brief**

The U.S. Court of Appeals for the Thirteenth Circuit was correct in finding for Westland Community College; the Petitioner's First Amendment rights were not violated. The reason for this is two-fold: firstly, this Court's decision in *Garcetti v. Ceballos* does not - and should not - provide for an "academic freedom" exception for public educators when teaching in classrooms; and secondly, since there is no "academic freedom" exception, and since the Petitioner was performing his "official duties" as a Government employee, his speech was not protected by the First Amendment.

Firstly, *Garcetti* does not provide for an "academic freedom" exception for in-classroom speech. While it is true that this Court mentioned "academic freedom" in *Garcetti*, its mention was little more than dicta in the Majority Opinion; it comprised a small paragraph – three brief lines – responding to Justice Souter's Dissenting Opinion. *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006). In addition, it is unclear exactly how far-reaching that concept was intended to be, and what Justice Souter exactly meant by "academic freedom." Ultimately, the mention of "academic freedom" in *Garcetti* was more of a general indication that not *all* speech on a campus may necessarily be regulated; here, however, the only issue is "in-classroom" speech by an instructor.

It is also noteworthy that it was Justice Souter himself who – in an earlier case; *Board of Regents of University of Wisconsin v. Southworth* – wrote of a University's ability to dictate what is taught to students; no one claims, he wrote, "that [a] University is somehow required to offer a spectrum of courses to satisfy a viewpoint neutrality requirement," for instance. *Board of Regents of University of Wisconsin System v. Southworth*, 529 U.S. 217, 243 (2000). A "University need not provide junior years abroad in North Korea as well as France, instruct in the theory of plutocracy as well as democracy, or teach Nietzsche as well as St. Thomas." *Id.* There's an understanding, in other words, that a University can regulate the curriculum communicated to its students.

Here, the Petitioner accuses Westland Community College of attempting to "cast a pall of orthodoxy over the classroom." *Keyishian v. Board of Regents of University of State of N.Y.*, 385 U.S. 589, 603 (1967). But this is unfounded. The Respondents agree with the Petitioner that

Writing Sample #1**Laith M. Adawiya**

academic freedom is an invaluable part of American society. But that academic freedom rests with the institution, not the individual professor. That was the implication of this Court in *Regents of University of California v. Bakke*, and it was the implication of Justice Frankfurter in *Sweezy v. State of New Hampshire*, in which he wrote that “it is the business of a University to provide that atmosphere which is most conducive to speculation, experiment, and creation... to determine for itself on academic grounds who may teach, what may be taught, [and] how it shall be taught.” *Sweezy v. State of New Hampshire*, 354 U.S. 234, 263 (1957).

Indeed, it has been a long-standing premise that schools have the ability to regulate on-campus speech – including that of educators - without falling out of the First Amendment’s favor. This is because, as the Seventh Circuit aptly put it, “a school system does not “regulate” teachers’ speech as much as it hires that speech. Expression is a teacher’s stock in trade, the commodity she sells to her employer in exchange for a salary.” *Mayer v. Monroe County Community School Corp.*, 474 F.3d 477, 479 (2007). And when one is paid a salary, they are expected to adhere to the policies and practices of their employer; this is not a revolutionary concept.

At the end of the day, a community college instructor is no different from any other government employee performing their job functions. Therefore, this court should not create an exception that would hamper a school’s ability to discipline an instructor for in-class speech. This Court noted in *Hazelwood v. Kuhlmeier* that the classroom is not a “public forum” within the normal sense of the phrase - it is “reserved for other intended purposes” under which “school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community.” *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 267 (1988). This is particularly true when dealing with “school-sponsored speech,” or speech “that students, parents, and members of the public might reasonably perceive to bear the” school’s ‘stamp of approval.’ *Id.* at 271. And by simple implication, any speech by an educator inside the classroom, while teaching a class, falls within this category of “school-sponsored speech.”

And the Respondents are not alone in this belief; numerous Circuit Courts have relied heavily on this proposition in the conduct of their judicial affairs.

Writing Sample #1**Laith M. Adawiya**

Justice Alito, writing then for the Third Circuit Court of Appeals, in *Edwards v. Cal. Univ. of Penn.*, acknowledged that “a public university professor does not have a First Amendment right to decide what will be taught in the classroom.” *Edwards v. Cal. Univ. of Penn.*, 156 F.3d 488, 491 (1998).

The Tenth Circuit, too, has acknowledged - as it did in *Adams v. Campbell County* - that educators do not “have an unlimited liberty as to [the] structure and content of the courses” they teach. *Adams v. Campbell County School Dist.*, 511 F.2d 1242, 1247 (1975).

The Eleventh Circuit stated, “we do not find support to conclude that academic freedom is an independent First Amendment right.” *Bishop v. Aronov*, 926 F.2d 1066, 1075 (1991). In *Bishop v. Aronov*, the University of Alabama tried to prevent Dr. Bishop from expressing his religious views in the classroom. In finding that Dr. Bishop’s comments constituted “school-sponsored speech,” the Eleventh Circuit held that “Dr. Bishop’s interest in academic freedom and free speech do[es] not displace the University’s interest inside the classroom,” and that the University of Alabama was well-within its right to prohibit Dr. Bishop from expressing his religious views during class hours. *Id.* at 1076.

The Thirteenth Circuit has also noted - as it did in the proceedings of this case - “that there is no basis for carving out an exception from the *Garcetti* rule for in-class speech of a public college instructor.” R. at 17.

This Court should thus maintain the status quo with respect to *Garcetti*, and explicitly hold that there is no “academic freedom” exception for in-class speech by an instructor.

Moving onto the second point; since there is no “academic freedom” exception for in-classroom speech, the “official duties” test of *Garcetti* should apply, meaning that the Petitioner’s speech was not protected by the First Amendment.

Briefly summarized, at issue in *Garcetti* was a Deputy District Attorney - Cabellos - who claimed he was retaliated against for writing a memorandum pointing out inaccuracies in an affidavit. In holding that Cabellos’ speech was not protected, this Court held that “when public employees make statements pursuant to their official duties, [they] are not speaking as citizens

Writing Sample #1**Laith M. Adawiya**

for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Garcetti*, 547 U.S. at 421. The “controlling factor” in *Garcetti* was the fact that Cabellos had been making “expressions... pursuant [to his] duties as a [public employee].” *Id.*

With all that said, the Respondents would like to acknowledge the importance of exercising one’s rights as a “citizen” while “on the job.” Indeed, the Respondents agree with the Petitioner on this point. After all, this Court noted in the same breath in *Garcetti* that “public employees do not surrender all their First Amendment rights by reason of their employment.” *Id.* at 417.

The threshold question, therefore, is whether or not one is speaking pursuant to their “official duties,” or as a “citizen.” Whether, as this Court acknowledged in *Kennedy v. Bremerton School District*, the employee was “acting within the scope of his duties” when speaking. *Kennedy v. Bremerton School District*, 142 S.Ct. 2407, 2425 (2022). Only if the answer is “yes” does the possibility of a First Amendment violation arise. But in the Petitioner’s case, even assuming all facts alleged in the complaint are true, the answer is a resounding “no.”

For the Petitioner acknowledged, in his own words, that the comments he had made in class were “a valid part of the lesson he was teaching.” R. at 6. In no uncertain terms, he acknowledged that he was fulfilling his role as an educator employed by the Government when speaking inside the classroom. This is compounded by the fact that - similar to *Garcetti* – the Petitioner’s comments were directly related to his responsibilities as an educator. Furthermore, the Petitioner subsequently defended his comments to his superior, explaining that “philosophy students must learn to have a rational discussion on controversial issues.” R. at 6.

Thus, taking the Petitioner’s words at face value, it is clear that even he believed he was speaking pursuant to his “official duties.” This means that his speech was not shielded by the First Amendment, and Westland Community College was well within its right to regulate it.

To conclude, the Petitioner was clearly acting in accordance with his “official duties” as a Government employee when lecturing students during class time, meaning such speech is not afforded the full breadth of the First Amendment’s protection. Furthermore, it is established

Writing Sample #1

Laith M. Adawiya

precedent - by this Court and Lower Courts - that Universities have the right to regulate an educator's speech inside the classroom without falling awry of the First Amendment.

The Respondents respectfully request that this Court clarify *Garcetti* with respect to academia as follows: there is no "academic freedom" exception to *Garcetti* for speech by an instructor in a classroom.

The heart of *Garcetti* - whether or not one is speaking pursuant to their "official duties" - should control even in academic public employment circumstances. As such, the First Amendment does not limit a public community college's power to discipline an instructor for in-class speech. With that said, the Respondents respectfully request that this Court affirm the Court of Appeals' ruling - that the Petitioner lacked a plausible First Amendment retaliation claim.

Writing Sample #2

Laith M. Adawiya

Memorandum on *Batson/Wheeler* Challenges and A.B. 3070

A centerpiece of the American judicial system involves the right to a trial by jury. So imperative to the administration of justice was this idea that three of the original ten Amendments comprising the Bill of Rights dealt with it. Indeed, the 5th Amendment forbids an individual to “be held to answer for a capital... crime, unless on a presentment or indictment of a Grand Jury.” U.S. Const. amend. V. In cases of criminal prosecution, the 6th Amendment requires that “the accused shall enjoy [a trial by] an impartial jury of the State and district wherein the crime shall have been committed.” U.S. Const. amend. VI. This has been further interpreted as requiring a jury consisting of a “representative cross-section of the community.” *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975). Finally, the 7th Amendment requires that in cases involving a “value of controversy” exceeding \$20, “the right of trial by jury shall be preserved.” U.S. Const. amend. VII. In short, it is evident that the Founders considered the right to a trial by jury an indispensable part of the idea of ‘blind and impartial justice.’

Of course, this right would be moot and inept if the composition of the jury in question was not selected on an impartial basis. This is the issue at hand with respect to the ‘*Batson/Wheeler* Challenge.’ While conducting voir dire, or the selection of a jury, both the plaintiff and defendant are permitted to strike jurors ‘for cause’ if either side determines a valid reason for the jurors being unable to be ‘fair and impartial.’ In addition to these ‘for-cause challenges,’ each side also has a limited number of ‘peremptory challenges’ that can be used to remove any potential juror, without need for a reason. These ‘peremptory challenges’ “traditionally have been viewed as one means of assuring the selection of a qualified and unbiased jury.” *Batson v. Kentucky*, 476 U.S. 79, 91 (1986). At the heart of the ‘*Batson/Wheeler* Challenge’ is the issue of whether race, gender, or other ‘group prejudices’ are being taken into account during voir dire.

The justification for placing limitations on peremptory challenges lies in the history of juror discrimination. It can be said that the history of the United States has been exemplified by the gradual admission of marginalized groups into previously prohibited sectors of public life. One of these has been the ability to serve on a jury, and to not be arbitrarily denied that right simply because of one’s identity. Over the years, courts have utilized the 14th Amendment’s ‘Equal Protection Clause’ as the vehicle for this progress.

Writing Sample #2**Laith M. Adawiya**

As early as 1880, in *Strauder v. West Virginia*, the Supreme Court had acknowledged that the discrimination of jurors on the basis of race was impermissible. Citing the recently ratified 14th Amendment, the Court ruled that “the very idea of a jury is a body... composed of [one’s] neighbors, fellows, associates, persons having the same legal status in society as that which he holds.” *Strauder v. State of W. Virginia*, 100 U.S. 303, 308 (1879). In doing so, the Court overturned a West Virginia statute excluding blacks from serving on juries, holding that it “amount[ed] to a denial of the equal protection of the laws.” *Id.* at 310. From then on, the issue involved the degree to which unconstitutional discrimination was occurring in the selection of a jury, and the requirements to prove such a claim.

In *Batson v. Kentucky*, the Supreme Court was once again confronted with the issue of whether a defendant was “denied equal protection through the State’s use of peremptory challenges to exclude members of his race from the petit jury.” *Batson*, 476 U.S. at 82. Specifically, a black man was charged with burglary, and subsequently convicted by an all-white jury. During the voir dire process, the prosecutor “used his peremptory challenges to strike all four black persons on the venire.” *Id.* at 83. In *Batson*, the Court expanded on the central holding of *Strauder*, ruling that “purposeful racial discrimination in [the] selection of the venire violates a defendant’s right to equal protection because it denies him the protection that a trial by jury is intended to secure.” *Id.* at 86. The Court further added that while the prosecutor normally has discretion in using peremptory challenges “for any reason at all... the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors... will be unable impartially to consider the State’s case against a black defendant.” *Id.* at 89.

Ultimately, the *Batson* Court found that “a defendant may establish a prima facie case of purposeful discrimination in [the] selection of the petit jury solely on evidence concerning the prosecutor’s exercise of peremptory challenges.” *Id.* at 96. In order to prove this, “the defendant first must show that he is a member of a cognizable racial group, and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant’s race.” *Id.* In addition, “the overall facts [must] indicate [that] the prosecutor[’s]” reason for using the challenges was to “exclude the veniremen from the petit jury on account of their race.” *Id.* Finally, it should be noted that “the defendant is entitled to rely on the fact” that peremptory challenges create an opportunity for “those to discriminate who are of a mind to discriminate.” *Id.* “This combination of factors” in the selection of a jury “raises the necessary inference of

Writing Sample #2**Laith M. Adawiya**

purposeful discrimination.” *Id.* If this standard has been met, “the burden [then] shifts to the prosecutor to demonstrate that the challenges were exercised for a race-neutral reason.” *People v. Lenix*, 187 P.3d 946, 954 (Cal. 2008). After all this, “the court determines whether the defendant has proven purposeful discrimination.” *Id.*

Aside from race, courts have also wrestled with the use of peremptory challenges on the basis of other characteristics. With respect to the issue of gender, the Supreme Court in *Taylor v. Louisiana* struck down a section of the Louisiana State Constitution providing “that a woman should not be selected for jury service unless she had previously filed a written declaration of her desire to be subject to jury service.” *Taylor*, 419 U.S. at 523. In that case, it was ruled that the “systematic exclusion of women from jury panels” was a violation of the 6th Amendment’s guarantee of a jury being comprised of a “representative cross-section of the community.” *Id.* at 528. Further, in 1994, the Supreme Court explicitly stated in *J.E.B. v. Alabama ex rel. T.B.* that “the Equal Protection Clause prohibits discrimination in jury selection [and the use of peremptory challenges] on the basis of gender, or on the assumption that an individual will be biased in a particular case” due to their gender. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 146 (1994).

More recently, the 9th Circuit Court of Appeals extended the *Batson* precedent to sexual orientation. In *SmithKline Beecham Corp. v. Abbott Laboratories*, the Court ruled that “equal protection prohibits peremptory strikes based on” that characteristic. *SmithKline Beecham Corp. v. Abbott Laboratories*, 740 F.3d 471, 474 (9th Cir. 2014).

While the aforementioned cases only dealt with the specified issues of race, gender, and sexual orientation, the California Supreme Court had already determined as early as 1978 in *People v. Wheeler* “that the use of peremptory challenges to remove prospective jurors on the sole ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community under... the California Constitution.” *People v. Wheeler*, 583 P.2d 748, 761-62 (Cal. 1978). Notably, the *Wheeler* Court did not limit the scope of its decision to specified characteristics, but to “group bias” in general. *Id.* It rationalized its decision on the understanding “that in our heterogeneous society jurors will inevitably belong to diverse and often overlapping groups defined by race, religion, ethnic or national origin, sex, age, education, occupation, economic condition, place of resident, and political affiliation.” *Id.* at 755. It is therefore reasonable to assume that the California Supreme Court utilized the phrase “group

Writing Sample #2

Laith M. Adawiya

bias” in its broadest and most general form, in order to encapsulate segments and characteristics of the population that have no valid reason to be discriminated against for jury duty.

Recently, the use of the ‘*Batson/Wheeler* Challenge’ has been altered by legislation in California. Perhaps in an effort to officially codify what *Wheeler* accomplished, A.B. 3070 § 231.7, which became effective on January 1, 2021, prohibits the use of peremptory challenges in criminal cases “on the basis of” a number of protected characteristics, including “race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation.” Code Civ. Proc., § 226 (2021). In essence, A.B. 3070 § 231.7 legislatively affirms *Batson/Wheeler*, and specifies a range of new categories upon which peremptory challenges cannot be used.

In determining whether or not the peremptory challenge is valid, the California Legislature has guided courts to the standard of “an objectively reasonable person,” and whether there is a “substantial likelihood” that they would view any of those listed characteristics as “factor[s] in the use of the peremptory challenge.” *Id.* The statute defines “an objectively reasonable person” as an individual who “is aware that unconscious bias, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in the State of California.” *Id.* Furthermore, the burden of a “substantial likelihood” implies “more than a mere possibility but less than a standard of more likely than not.” *Id.* The factors that a court may utilize include those articulated in *Batson*, such as membership of a “perceived cognizable group” by either the “objecting party,” “alleged victim,” or “witnesses.” *Id.* Other factors to be considered include a difference in questioning during voir dire between members of a “cognizable group” and non-members. *Id.*

In addition, A.B. 3070 § 231.7 lays out other reasons that are invalid for peremptory challenges, unless otherwise shown that “an objectively reasonable person would view the rationale as unrelated to the prospective juror’s race, ethnicity,” and other protected characteristics. *Id.* Some of these include an expression of “distrust... with law enforcement or the criminal legal system,” one’s neighborhood, their “ability to speak another language,” and their “dress, attire, or personal appearance.” *Id.*

The new legislation also shifts the burden of proof with respect to peremptory challenges. In *Batson*, the onus was on the challenging party to “establish a prima facie case of purposeful discrimination.” *Batson*, 476 U.S. at 96. Indeed, “the ultimate burden of persuasion regarding

Writing Sample #2**Laith M. Adawiya**

racial motivation rest[ed] with, and never shift[ed] from, the opponent of the strike.” *People v. Lenix*, 187 P.3d 946, 954 (Cal. 2008). Now, the California Legislature has placed the burden onto the party that is exercising the peremptory challenge, insofar as they must “state the reasons the peremptory challenge has been exercised.” Code Civ. Proc., § 226 (2021). Following this, “the court evaluate[s] the reasons given,” and makes an ultimate determination on whether “there is a substantial likelihood that an objectively reasonable person would view” the aforementioned characteristics as “factor[s] in the use of the peremptory challenge.” *Id.* This will undoubtedly make it easier to mount a ‘*Batson/Wheeler* Challenge,’ since the moving party’s burden has been severely lessened.

Due to the recency of A.B. 3070 § 231.7, case law is mostly unavailable regarding the legislation. In both *People v. Battle* and *People v. Ardoin*, the California Supreme Court and the California Court of Appeals, respectively, declined to review the legislation due to it not having gone into effect yet. Ultimately, A.B. 3070 § 231.7 has served to codify the *Batson/Wheeler* precedent, as well as extend it to an unprecedented array of categories and characteristics. How this will affect voir dire from a practical perspective, however, remains to be seen.

Applicant Details

First Name **Korinne**
 Last Name **Dunn**
 Citizenship Status **U. S. Citizen**
 Email Address korinned@pennlaw.upenn.edu
 Address

Address

Street
1338 Chestnut St Apt 616
City
Philadelphia
State/Territory
Pennsylvania
Zip
19107
Country
United States

Contact Phone Number **8123403768**

Applicant Education

BA/BS From **Indiana University-Bloomington**
 Date of BA/BS **May 2016**
 JD/LLB From **University of Pennsylvania Carey Law School**
<https://www.law.upenn.edu/careers/>
 Date of JD/LLB **May 15, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **The Regulatory Review**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
Externships **No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Davis, Michael
michaeladavis888@gmail.com
Levick, Marsha
mlevick@jlc.org
215-625-0551
Wilkinson-Ryan, Tess
twilkins@law.upenn.edu
215-746-3457

References

Nancy Glass, Trial Attorney
U.S. Department of Justice, Civil Rights Division, Special Litigation
Section
202-598-0139
nancy.glass@usdoj.gov

Malik Pickett, Esq., Staff Attorney,
Juvenile Law Center
267-972-13777
mpickett@jlc.org

Teela Scrubb, School Administrator and Guidance Counselor,
Jefferson County Public Schools
502-533-0641
teela.scrubb@jefferson.kyschools.us

Jean Wolph, Director of the Louisville Writing Project
502-558-1931
jcwolph@gmail.com

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Korinne A. Dunn
1338 Chestnut Street
Philadelphia, PA 19107
korinned@pennlaw.upenn.edu
812-340-3768

June 22, 2023

The Honorable James O. Browning
United States District Court
District of New Mexico
Pete V. Domenici United States Courthouse
333 Lomas Boulevard, N.W., Room 660
Albuquerque, NM 87102

Dear Judge Browning:

I am writing to request your consideration of my application for a clerkship beginning in fall 2024. I am a third-year law student at the University of Pennsylvania Carey Law School.

As a former educator in an under-resourced middle school and previous legal intern with Juvenile Law Center, Education Law Center, and the Civil Rights Division of the U.S. Department of Justice, I am passionate about continuing to serve the public as a law clerk. I have developed writing, communication, and legal research skills through experience as a writing teacher and professional development facilitator, through legal internships that have required me to answer challenging research questions and present findings both in writing and orally, and through work as an associate editor with Penn Carey Law School's *The Regulatory Review*. I am continuing to develop direct representation skills this summer as an intern with Community Legal Services of Philadelphia.

I enclose my resume, transcript, and writing sample. Letters of recommendation from Professor Marsha Levick (mlevick@jlc.org, 267-257-0394), Professor Michael Davis (michaeladavis888@gmail.com, 610-505-6387), and Professor Tess Wilkinson-Ryan (twilkins@law.upenn.edu, 215-746-3457) are also included. Please let me know if any other information would be useful for your consideration. Thank you.

Respectfully,

Korinne A. Dunn

Korinne Dunn

1338 Chestnut St, Apt 616 | Philadelphia, PA 19107 | (812) 340-3768 | korinned@pennlaw.upenn.edu

EDUCATION

University of Pennsylvania Carey Law School, Philadelphia, PA

J.D. Candidate, May 2024

Dean's Scholar; William Henry Wilson Scholar

Associate Editor, *The Regulatory Review*

Member, Criminal Record Expungement Project

University of Louisville, Louisville, KY

Master of Arts in Teaching, May 2018

Indiana University, Bloomington, IN

B.A., Anthropology, *summa cum laude*, May 2016

Honors: Phi Beta Kappa, Executive Dean's List, Founder's Scholar, National Society for

Linguistic Anthropology Undergraduate Paper Prize

EXPERIENCE

Community Legal Services, Philadelphia, PA

May 2023–August 2024

Summer Intern

Special Litigation Section, Civil Rights Division, DOJ, Washington, DC

January 2023–May 2023

Spring Extern

- Served on Police Practice Group case team at investigation stage. Contributed to Corrections and Juvenile Practice Groups. Researched issues related to homelessness, disability, and discrimination.

Education Law Center, Philadelphia, PA

September 2022–December 2022

Fall Extern

- Researched enforceability of settlement terms for class action. Researched the application of disability education law to students languishing in residential settings. Conducted client intake.

Juvenile Law Center, Philadelphia, PA

June 2022–August 2022

Summer Intern

- Prepared for and observed depositions in class action against high-profile youth detention center. Researched immunity in class action against state parole board. Researched trends on youth transfer.

Jefferson County Public Schools, Louisville, KY

July 2016–May 2021

Teacher, Middle Grades English Language Arts

- Created and implemented curriculum in literacy and writing for 7th and 8th graders
- Committees/boards*: Professional Learning Community Lead, 2020–2021; Jefferson County Teachers Association (JCTA) Representative, 2018–2021; National Seeking Educational Equity and Diversity Project, 2018–2020; Racial Equity Team, 2017–2021; Student LGBTQ+ Club Sponsor, 2019–2021.

Adolescent Literacy Project, Louisville, KY

May 2020–April 2021

Program Co-Facilitator

- Developed and facilitated English Language Arts professional development.

Bhutanese American Hindu Society, Louisville, KY

July 2016–May 2020

Volunteer Grant Drafter, English Language Support

Kentucky Refugee Ministries, Louisville, KY

August 2017–December 2019

Volunteer, English Language Tutor

New Leaf-New Life, Bloomington, IN

July 2015–December 2017

Volunteer, Program Co-Facilitator

- Facilitated workshops in argument for incarcerated individuals. Assisted formerly incarcerated clients with resume building, job searches, and community resources.

Korinne Dunn
UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

Spring 2023

Note: I will provide an updated transcript on or after June 12.

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Labor Law	Sean Burke	A	3
National Security Law	Claire Finkelstein	A	3
Law Reform Litigation	Mark Aronchick	A	1
Ad-Hoc Externship	Marsha Levick	In Progress	7

Fall 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Professional Responsibility	Brent Landau	A	2
Federal Income Tax	Chris Sanchirico	A	3
Discrimination in Education	Michael Davis	A-	3
Juvenile Justice	Jessica Feierman, Marsha Levick	A	3
Ad-Hoc Externship	Marsha Levick	CR	3

Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Criminal Law	Shaun Ossei-Owusu	A	4
Constitutional Law	Kermit Roosevelt	B+	4
Consumer Law	Tess Wilkinson-Ryan	B+	3
Reproductive Rights and Justice	Dorothy Roberts	B+	3
Legal Practice Skills	Jessica Simon	CR	2
Legal Practice Skills Cohort	Erich Makarov	CR	0

Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Civil Procedure	Yanbai Andrea Wang	B+	4
Contracts	David Hoffman	B	4
Torts	Karen Tani	B	3
Legal Practice Skills	Jessica Simon	CR	4
Legal Practice Skills Cohort	Erich Makarov	CR	0

2/6/2016

Unofficial Transcripts

Report Results

[Return](#)

Student Unofficial Transcript

Indiana University Bloomington

Name : Dunn, Korinne A

Student ID : 0002830589

SSN : XXX-XX-1057

Birthdate : 11-15-XXXX

Address : 826 S Western Dr
Bloomington, IN 47403-1877
United States

Print Date : 02-06-2016

Request Nbr : 019132905

- - - - - Beginning of Undergraduate Record - - - - -

Fall 2011 Bloomington

Program : University Div Ugrd Nondeg

Program : University Div Ugrd Nondeg

Course	Title	Hrs	Grd
ENG-W 131	ELEMENTARY COMPOSITION 1	3.00	A-
THTR-T 101	SCRIPT ANALYSIS FOR THEATRE	3.00	A
Semester:	IU GPA Hours: 6.00	GPA Points: 23.100	
	Hours Earned: 6.00	GPA: 3.850	
Cumulative:	IU GPA Hours: 6.00	GPA Points: 23.100	
	Hours Earned: 6.00	GPA: 3.850	

Spring 2012 Bloomington

Program : University Div Ugrd Nondeg

Program : University Div Ugrd Nondeg

Course	Title	Hrs	Grd
ENG-L 202	LITERARY INTERPRETATION	3.00	A-
Semester:	IU GPA Hours: 3.00	GPA Points: 11.100	
	Hours Earned: 3.00	GPA: 3.700	
Cumulative:	IU GPA Hours: 9.00	GPA Points: 34.200	
	Hours Earned: 9.00	GPA: 3.800	

Fall 2013 Bloomington

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
ANTH-E 200	SOCIAL & CULTURAL ANTHROPOLOGY	3.00	A
ANTH-L 200	LANGUAGE AND CULTURE	3.00	A
COLL-C 105	CRIT APPROACHES: NATL&MATH SCI	3.00	A
Course Topic(s): SISTER SPECIES			
GER-G 100	BEGINNING GERMAN I	4.00	A
THTR-T 100	INTRODUCTION TO THEATRE	3.00	A

Transfer Credit from Boston University

Applied Toward Arts & Sciences Undergraduate Program Bloomington

ENG-W 131	ELEMENTARY COMPOSITION 1	4.00	T
HPER-E 148	T'AI CHI CH'UAN	1.00	T
HPER-UN 100	HPER UNDISTRIBUTED-100 LEVEL	1.00	T

2/6/2016

Unofficial Transcripts

MUS-UN	100	MUS UNDISTRIBUTED-100 LEVEL	0.50	T
THTR-T	120	ACTING I: FUNDMNTLS OF ACTING	3.00	T
THTR-T	125	INTRO TO THEATRICAL PRODUCTION	2.00	T
THTR-T	325	VOICE AND SPEECH	2.00	T
THTR-T	410	MOVEMENT FOR THE THEATRE I	2.00	T
THTR-T	460	DEVELOPMENT OF DRAMATIC ART 1	3.00	T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	3.00	T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	2.00	T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	1.00	T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	1.00	T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	3.00	T
THTR-UN	100	THTR UNDISTRIBUTED-100 LEVEL	2.00	T
Transfer Hrs Passed:			30.50	

Test Credit Applied Toward University Div Pre-CollArts&Sc Program Bloomington

Course	Title	Hrs	Grd
ENG-W 131EX	SEM 1 ENG COMPOSITION BY EXAM	0.00	T
TEST-BL 99MATH01	PLCMT MATH LEVEL 01	0.00	T

Test Credit Hrs: 0.00

IU Special Credit Applied Toward University Div Pre-CollArts&Sc Program Bloomington

ENG-W 143	INTERDISCIP STUDY EXPOS WRTNG	2.00	S
Other Credit Hrs:		2.00	

Semester:	IU GPA Hours:	16.00	GPA Points:	64.000
	Hours Earned:	48.50	GPA:	4.000
Cumulative:	IU GPA Hours:	25.00	GPA Points:	98.200
	Hours Earned:	57.50	GPA:	3.928

Spring 2014 Bloomington

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
ANTH-B 200	BIOANTHROPOLOGY	3.00	A+
GER-G 150	BEGINNING GERMAN II	4.00	A
TEL-T 206	INTRO TO DESIGN & PRODUCTION	3.00	A+
THTR-T 319	ACTING III: ADV SCENE STUDY	3.00	A

Transfer Credit from Ivy Tech Comm Coll Bloomington

Applied Toward Arts & Sciences Undergraduate Program Bloomington

MATH-M 118	FINITE MATHEMATICS	3.00	T
Transfer Hrs Passed:		3.00	

Semester:	IU GPA Hours:	13.00	GPA Points:	52.000
	Hours Earned:	16.00	GPA:	4.000
Cumulative:	IU GPA Hours:	38.00	GPA Points:	150.200
	Hours Earned:	73.50	GPA:	3.953

Summer 2014 Bloomington

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
--------	-------	-----	-----

2/6/2016

Unofficial Transcripts

COLL-P 155 PUBLIC ORAL COMMUNICATION 3.00 A+
 Semester: IU GPA Hours: 3.00 GPA Points: 12.000
 Hours Earned: 3.00 GPA: 4.000
 Cumulative: IU GPA Hours: 41.00 GPA Points: 162.200
 Hours Earned: 76.50 GPA: 3.956

Fall 2014 Bloomington

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
ANTH-P 200	INTRODUCTION TO ARCHAEOLOGY	3.00	A
GER-G 200	INTERMEDIATE GERMAN I	3.00	A
LING-L 307	PHONOLOGY	3.00	A-
LING-L 315	INTRO TO SOCIOLINGUISTICS	3.00	A
THTR-T 419	ACTING IV: ACTING SHAKESPEARE	3.00	A
THTR-T 441	ACTING FOR THE CAMERA	3.00	A
Semester: IU GPA Hours:	18.00	GPA Points:	71.100
Hours Earned:	18.00	GPA:	3.950
Cumulative: IU GPA Hours:	59.00	GPA Points:	233.300
Hours Earned:	94.50	GPA:	3.954

Spring 2015 Bloomington

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
ANTH-E 397	PEOPLES & CULTURES OF MID EAST	3.00	A
ANTH-L 400	SEM IN ETHNOGRAPHY OF COMM	3.00	A
Course Topic(s): LANGUAGE IN/OF MEDIA			
GER-G 250	INTERMEDIATE GERMAN II	3.00	A
LING-L 306	PHONETICS	3.00	A
THTR-T 445	VOICE AND DIALECTS	3.00	W
Semester: IU GPA Hours:	12.00	GPA Points:	48.000
Hours Earned:	12.00	GPA:	4.000
Cumulative: IU GPA Hours:	71.00	GPA Points:	281.300
Hours Earned:	106.50	GPA:	3.962

Summer 2015 Bloomington

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
MSCH-L 424	TELECOMM & THE CONSTITUTION	3.00	A
SPEA-V 220	LAW AND PUBLIC AFFAIRS	3.00	A
Semester: IU GPA Hours:	6.00	GPA Points:	24.000
Hours Earned:	6.00	GPA:	4.000
Cumulative: IU GPA Hours:	77.00	GPA Points:	305.300
Hours Earned:	112.50	GPA:	3.965

Fall 2015 Bloomington

Program : Arts & Sciences Undergraduate

Course	Title	Hrs	Grd
ANTH-E 437	POWER & VIOLENCE IN ETHN PERSP	3.00	A+
ANTH-P 330	HISTORICAL ARCHAEOLOGY	3.00	A
LING-L 203	INTRO TO LINGUISTIC ANALYSIS	3.00	A
SPEA-V 339	LEGAL HISTORY & PUBLIC POLICY	3.00	A
SPEA-V 435	NEGOTIATION & ALTERN DISP RES	3.00	A
Semester: IU GPA Hours:	15.00	GPA Points:	60.000

2/6/2016

Unofficial Transcripts

Hours Earned:	15.00	GPA:	4.000
Cumulative: IU GPA Hours:	92.00	GPA Points:	365.300
Hours Earned:	127.50	GPA:	3.971

Student Undergraduate Program Summary

GPA Hours:	92.00	Transfer/Test Hours Passed:	29.50
Hours Earned:	123.50	Points:	365.300
		GPA:	3.971

Indiana University Undergraduate Summary

IU GPA Hours:	92.00	Transfer/Test Hours Passed:	33.50
Hours Earned:	127.50	Points:	365.300
		GPA:	3.971

Academic Objective as of Last Enrollment

Arts & Sciences Undergraduate

Anthropology BA

Law and Public Policy MIN

Linguistics MIN

Theatre & Drama MIN

- - - - - **Non-Course Milestones** - - - - -

2015-05-13 Indiana STGEC - IU Bloomington

Milestone Status: Completed

[Return](#)

[Go to Top](#)



Unofficial Transcript - Graduate Career

Name: Korinne Dunn
Student ID: 5173609

Student Address: 3915 Southern Pkwy Apt 2
Louisville, KY 40214-1676
United States
Print Date: 2020-11-12

Degrees Awarded

Degree: Master of Arts in Teaching
Confer Date: 2018-05-12
Plan: Middle School Education, concentration in English

Other Institutions Attended

Indiana University Bloomington
814 East Third Street
Bloomington, IN 47405
United States
Spalding University
851 South 4Th Street
Louisville, KY 40203
United States
Boston University
121 Bay State Road
Boston, MA 02215
United States

External Degrees

Indiana University Bloomington
Bachelor of Arts 2016-05-07

Beginning of Graduate Record
Summer 2016

Program: Grad Education Degree
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 631	INTEG TCHG AND LRNG I	3.000	3.000	A	12.000
EDTP 632	INTEG TCHG AND LRNG II	3.000	3.000	A	12.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000 Term Totals	6.000	6.000	6.000	24.000
		Term Transfer Totals		0.000	
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	4.000 Cum Totals	6.000	6.000	6.000	24.000

Fall 2016

Program: Grad Education Degree
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 621	INTENSIVE FIELD EXPERNCE	1.500	1.500	P	0.000
Course Attributes: Field Experience/Practicum					
EDTP 633	INTEG TCHG AND LRNG III	3.000	3.000	A	12.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000 Term Totals	4.500	4.500	3.000	12.000
		Term Transfer Totals		0.000	

		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	4.000 Cum Totals	10.500	10.500	9.000	36.000

Spring 2017

Program: Grad Education Degree
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 607	MDL SCHL LANG ARTS MTHDS	3.000	3.000	A+	12.000
Course Attributes: Field Experience/Practicum					
EDTP 627	PRACTICUM	3.000	3.000	A	12.000
Topic: PRACTICUM FOR ALTERNATIVE CERT					
MSPC 100	METRO-SPALDING UNIVERSITY	3.000	3.000	A+	12.000
Topic: EDR531 LIT FOR YOUNG ADULTS					

		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000 Term Totals	9.000	9.000	9.000	36.000
		Term Transfer Totals		0.000	

		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	4.000 Cum Totals	19.500	19.500	18.000	72.000

Summer 2017

Program: Grad Education Degree
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 503	DEV CROSS-CULT COMPETENC	3.000	3.000	A+	12.000
EDTP 580	DGTL CTZN: TECHN & TCHNG	3.000	3.000	A+	12.000
EDTP 620	RDG & WRTG ATC	3.000	3.000	A	12.000

		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	4.000 Term Totals	9.000	9.000	9.000	36.000
		Term Transfer Totals		0.000	

		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	4.000 Cum Totals	28.500	28.500	27.000	108.000

Fall 2017

Program: Grad Education Degree
Plan: Middle School Education, concentration in English Major

Course	Course Title	Attempted	Earned	Grade	Points
EDTP 678	SUPPORTING TCHR INTERN I	3.000	3.000	A-	11.100

		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Term GPA	3.700 Term Totals	3.000	3.000	3.000	11.100
		Term Transfer Totals		0.000	

		<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA	3.970 Cum Totals	31.500	31.500	30.000	119.100



Unofficial Transcript - Graduate Career

Name: Korinne Dunn
Student ID: 5173609

Spring 2018						
Program:		Grad Education Degree				
Plan:		Middle School Education, concentration in English Major				
Course		Course Title	Attempted	Earned	Grade	Points
EDTP	679	SUPPORTING TCHR INTERN II	3.000	3.000	A	12.000
			Attempted	Earned	GPA Units	Points
Term GPA		4.000 Term Totals	3.000	3.000	3.000	12.000
		Term Transfer Totals		0.000		
			Attempted	Earned	GPA Units	Points
Cum GPA		3.972 Cum Totals	34.500	34.500	33.000	131.100

Graduate Career Totals

Cum GPA	3.972	Cum Totals	34.500	34.500	33.000	131.100
---------	-------	------------	--------	--------	--------	---------

End of Unofficial Transcript - Graduate Career

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 22, 2023

The Honorable James Browning
Pete V. Domenici United States Courthouse
333 Lomas Boulevard, N.W., Room 660
Albuquerque, NM 87102

Re: Clerkship Applicant Korinne Dunn

Dear Judge Browning:

It is my great pleasure to offer my recommendation to support Korinne Dunn and her interest in applying to serve as a judicial clerk. Ms. Dunn has the character, intellect, legal knowledge and skills, work ethic and dedication, and even temperament to serve with distinction and honor. She is a former student in my seminar course, Discrimination in Education, at the University of Pennsylvania Carey Law School. Prior to her enrollment in the course for the fall 2022 semester, Ms. Dunn introduced herself and asked if I would support her as faculty sponsor for her externship with the Education Law Center (ELC), a public interest non-profit firm focusing on educational rights and related litigation and advocacy. The externship program was highly structured and required that we meet hourly every other week in the semester to review and discuss her experiences and the detailed reflective journal entries she had written for each session. In addition to having Ms. Dunn in my class, working with her on the ELC externship gave me a good opportunity to assess her worthiness for advancing her legal career and serving as a judicial clerk.

Before attending law school, Ms. Dunn had demonstrated her intellectual ability and dedication to excellence, first by earning her bachelor's degree in Anthropology from Indiana University in 2016, with summa cum laude and Phi Beta Kappa honors. After graduating, she taught in public school in Louisville, Kentucky from 2016 to 2021, with a strong focus on English language arts and literacy. She created and implemented a curriculum for teaching literacy and writing to middle school students. In 2018 Ms. Dunn earned a Master of Arts in Teaching degree from the University of Louisville while teaching full time. With her qualifications and qualities Ms. Dunn was admitted to and entered the University of Pennsylvania Carey Law School in fall 2021. She has continued to expand her knowledge and intellectual capacity and abilities, most notably as to the study of law and legal practice. Her achievement of Dean's Scholar status underscores her work ethic and desire to succeed.

Ms. Dunn has exemplified a strong service orientation in volunteering for several projects and initiatives. During her public school tenure, in addition to her teaching responsibilities, she provided support for community literacy and English language improvement programs. For example, Ms. Dunn developed and co-facilitated the Adolescent Literacy Project in Louisville. She also volunteered to assist with English language support for the Bhutanese American Hindu Society, and she was a volunteer tutor for Kentucky Refugee Ministries. She has continued in her service orientation while at law school, working as a member of the Criminal Record Expungement Project.

In my course, Ms. Dunn also demonstrated she has the required intellectual capacity and practical and diplomatic skills necessary to become and exceed expectations as a judicial clerk. I teach a seminar course with enrollment limited to fourteen students to encourage and facilitate participation in class discussions. Ms. Dunn came to class prepared and contributed regularly with analysis, comments, and good questions. Her educational background and public school experiences were helpful to the class because she offered important knowledge, perspectives, and understanding of real-world teaching and learning. Ms. Dunn also excelled in the presentation of an in-class oral argument required for course completion. Students are randomly paired to give opposing counsel arguments, with questions directed from the class "court." As part of the requirement, students must prepare for oral argument based on assigned cases for the week and must write and "serve" written memoranda prior to the argument. Ms. Dunn showed her ability in both components of advocacy skills, writing her legal arguments and presenting them orally before an interrogating body, at the highest level of class performance.

Ms. Dunn's legal writing skills were displayed in her final paper for the course in which she analyzed the complicated and divisive issues surrounding racial segregation, remedy, and resegregation in Jefferson County public schools in Louisville Kentucky. She explored the impact of the Supreme Court's decision in Parents Involved and its lack of deference to the school district's educational expertise and judgment, contributing to resegregation. She deftly reviewed the segregation history of the district and the evolution of litigation which resulted in the district's voluntary desegregation plan as a foundation for a comprehensive discussion of the use of race in student assignments. Applying data, policy arguments, and a detailed Equal Protection analysis, she articulated how the use of race in student assignments by Jefferson County did not violate the Equal Protection Clause. Ms. Dunn's writing was clear, succinct, and persuasive. She presented her thesis at the beginning, set up the issues well, and took them to conclusion in logical order.

Ms. Dunn achieved great success in her externship in several respects. I believe she fulfilled the objectives of the program by deepening her substantive knowledge, sharpening essential lawyering skills, and appreciating professional values. Ms. Dunn's placement supervisor evaluated her performance as excellent. Her lawyering and legal writing skills were highly rated, and she was dependable and reliable. She was punctual, efficient with good organizational skills, and met expected deadlines. In our meetings to review her reflexive journal entries, we discussed many matters and issues, including substantive and procedural issues, legal ethics, lawyering and legal practice, case strategy, and office politics. Ms. Dunn demonstrated great instincts by raising questions about interactions with others in the office and about attorney decisions and reasons for certain actions. Ms. Dunn is forthright, diligent and diplomatic, and she is eager to learn and improve. I enjoyed mentoring her because she is a

Michael Davis - michaeladavis888@gmail.com

pleasure to work with and she works hard.

I wholeheartedly recommend Ms. Dunn to serve as judicial clerk. Thank you.

Sincerely,

Michael A. Davis, Esq.
michaeladavis888@gmail.com
610-505-6387

Michael Davis - michaeladavis888@gmail.com

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 22, 2023

The Honorable James Browning
Pete V. Domenici United States Courthouse
333 Lomas Boulevard, N.W., Room 660
Albuquerque, NM 87102

Re: Clerkship Applicant Korinne Dunn

Dear Judge Browning:

I write enthusiastically to support Korinne Dunn's application for a clerkship with Your Honor.

I first met Korinne Dunn in Fall 2022 when she was a student in my Juvenile Justice Seminar at Penn Carey Law School. The class met weekly for two hours. Students were required to prepare both oral and written presentations on an issue of their choosing, as well as attend and participate in weekly discussions. Korinne was an avid participant, offering interesting insights and asking probing questions. Throughout the semester, Korinne consistently demonstrated her intellectual acuity, critical thinking skills, and strong research and writing ability.

More recently, I served as Korinne's faculty supervisor for her Spring externship with the Special Litigation Section of the U.S. Department of Justice, Civil Rights Division. In this capacity, I met bi-weekly with Korinne to discuss her work and reflections in this position, and also reviewed her bi-weekly written journal entries describing the various assignments she was working on as well as any questions or challenges she was facing.

I thoroughly enjoyed serving as Korinne's supervisor for her externship. I looked forward to reading her journal entries and always appreciated our follow-up conversations where we discussed in depth not only the work she was doing but her reactions to the work and her new colleagues. I always found Korinne to be an astute observer and chronicler of her experience at DOJ. She asked important questions about the direction, strategy or even value of some of her research assignments, and was extremely thoughtful in her assessment of the litigation – or potential litigation – she was exposed to.

I particularly appreciated her intellectual curiosity about the legal approach DOJ might be taking in a particular matter, or her candid concern that some of her assignments often took her to a dead end. What I observed over the course of our semester-long conversations was her growth as a law student – and perhaps more importantly her growth as a future lawyer. Korinne entered her externship excited for the opportunity but uncertain of what to expect, and still unsettled about her future career direction. When the externship came to a close, Korinne had a much clearer vision for her own future, motivated by the commitment, passion and dedication of her DOJ colleagues. Wisely, she came to understand that the path for civil rights attorneys is rarely even or straight; known and unknown challenges invariably create detours and obstacles, as well as new opportunities.

I see the direct evidence of her growth in her decision to pursue this judicial clerkship. We discussed repeatedly in our bi-weekly calls how she could connect her experience at DOJ to her next and most immediate post-graduation career goals. She is anxious to continue to develop her research and writing skills – already exceptional – and continue to explore new subject matter areas. Korinne is excited about this opportunity to pursue a clerkship as she continues to formulate her professional path.

Finally, Korinne is a delightful person to work and engage with. She is confident, driven, and always intellectually curious about the work she is undertaking. As one of the first in her family to achieve this level of education, she also demonstrates humility in the way she approaches her work and is always mindful of the extraordinary opportunities she has had, and will have, to do work that she cares deeply about. I am extremely supportive of Korinne and recommend her to you without qualification. If I may be of further assistance, please do not hesitate to reach out to me via email or phone.

Sincerely,

Marsha Levick
Adjunct Faculty
University of Pennsylvania Carey Law School

Chief Legal Officer
Juvenile Law Center
(215) 625-0551
mlevick@jlc.org

Marsha Levick - mlevick@jlc.org - 215-625-0551

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 22, 2023

The Honorable James Browning
Pete V. Domenici United States Courthouse
333 Lomas Boulevard, N.W., Room 660
Albuquerque, NM 87102

Re: Clerkship Applicant Korinne Dunn

Dear Judge Browning:

I am writing to recommend Korinne Dunn for a clerkship. Korinne is a wonderful student and a remarkable citizen of every community she belongs to, and I am thrilled to recommend her.

I taught Korinne in a first-year elective course, Consumer Law, in the spring of 2022. She was a thoughtful, prepared participant, even in a class of 90 students.

In our Consumer Law class, I had students complete an unusual activity, which was to read a work of sociology on for-profit post-secondary schools and to discuss in class and to write me a short memo on the legal implications of what they were reading about. Korinne made an astute connection between the narrow doctrine of misrepresentation of opinion in the common law and the fraud claims plaguing some for-profit schools. She drew on the opinion from *Vokes vs. Arthur Murray* to make this comparison:

In *Arthur Murray*, the plaintiff was seen by the court as a victim of a scheme designed to pressure her into spending more money to achieve more stature-- the court's decision turned on the fact that the person pressuring her expenditures, the teacher, possessed and weaponized his superior knowledge of her lack of skill. In for-profit school recruiting, as [the author of *Lower Ed*] portrays it, the "enrollment officers" were evidently aware of the relatively low worth of the degrees they were selling to students and of the relatively high likelihood that the prospective students would not complete the degree requirements to make their investments worthwhile.

She concluded with the core of the dilemma, noting that any intervention into the contracts between schools and students risks doing more harm than good with "regulations...hindering their ability to participate in the education and labor market." Korinne is a great writer, and that skill shone through on her exam as well.

Korinne is a first-generation professional student who came to Penn Law after five years teaching middle school English. She describes her experience teaching in public schools in Kentucky as an abrupt realization of her own limitations as a new teacher—especially as an outsider, racially and geographically, to her students' community—and a systematic, dogged insistence on improving that yielded real progress over time. Her transcript from Penn suggests that this ability to dig in and learn is part of a pattern. Her first semester was clearly rocky, her second semester an improvement, and by the time she completed the notoriously challenging Tax course her 2L fall, she was a straight-A student.

Finally, Korinne is a committed member of her community, wherever it is. When she was in college, she taught employment workshops for incarcerated and formerly-incarcerated people. When she was teaching middle school in Louisville, she sponsored the LGBTQ+ Club and the Racial Equity committee. At Penn Law, she works with the Criminal Record Expungement Project and edits the *Regulatory Review*. She is incredibly well-liked by her peers, because she is a real contributor who is also a lovely person to be around.

If I can offer any further reflections on this wonderful student, please do not hesitate to reach out by phone (cell: 215-668-4272) or email.

Sincerely,

Tess Wilkinson-Ryan
Professor of Law
Tel.: (215) 746-3457
E-mail: twilkins@law.upenn.edu

Tess Wilkinson-Ryan - twilkins@law.upenn.edu - 215-746-3457

Korinne A. Dunn

1338 Chestnut Street
Philadelphia, PA 19107
korinned@pennlaw.upenn.edu
(812) 340-3768

WRITING SAMPLE

The attached writing sample is a memorandum that I drafted as an assignment during a semester externship with the United States Department of Justice, Civil Rights Division, Special Litigation Section. I was asked to research whether a city's police department may violate the Eighth Amendment Cruel and Unusual Punishments Clause when its officers wake individuals experiencing homelessness sleeping in public areas and ask them to move under threat of arrest. I performed all research and this work is entirely my own.

All identifying facts and references to specific departments and cities have been redacted for confidentiality. I am submitting the attached writing sample with the permission of the Special Litigation Section.

Disclaimer: The views and analysis in this memorandum are my own and do not necessarily reflect the views of any other person or organization.

MEMORANDUM

DATE April 28, 2023
TO [Redacted]
FROM Korinne Dunn
SUBJ Memorandum on application of the Eighth Amendment to police threats of arrest toward people experiencing homelessness.

QUESTION PRESENTED

Does a police department violate the Eighth Amendment when it invokes a city's overturned anti-camping ordinance to order individuals experiencing homelessness to wake up and move under threat of arrest?

BRIEF ANSWER

It is unlikely a police department violates the Eighth Amendment Cruel and Unusual Punishments Clause when its officers wake individuals experiencing homelessness and order them to move under threat of arrest alone. The Ninth Circuit has held that for the Cruel and Unusual Punishments clause to apply, individuals must be subjected to a criminal penalty, such as a citation, fine, arrest, or prosecution. No such penalty is imposed when officers merely threaten individuals with arrest.

However, if the order to move under threat of arrest initiates a criminal process that leads to criminal penalties in the future, the practice may implicate the Eighth Amendment Cruel and Unusual Punishments Clause. The strength of such an argument may depend on the extent to which the police practice can be said to contribute to subsequent criminalization.

DISCUSSION

I. IT IS UNLIKELY A POLICE DEPARTMENT VIOLATES THE EIGHTH AMENDMENT CRUEL AND UNUSUAL PUNISHMENTS CLAUSE WHERE NO CRIMINAL PENALTY IS IMPOSED.

A police department is unlikely to violate the Eighth Amendment Cruel and Unusual Punishments Clause by waking individuals experiencing homelessness and ordering them to move under threat of arrest, where no such arrest or other criminal penalty is imposed.

The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. The Cruel and Unusual Punishments Clause circumscribes the criminal process by 1) limiting the types of punishment the government may impose, 2) banning punishment “grossly disproportionate” to the severity of the crime, and 3) placing substantive limits on what the government may criminalize. *Ingraham v. Wright*, 430 U.S. 651, 667 (1977). Here, only the third limitation is relevant. The Ninth Circuit has held that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Martin v. Boise*, 920 F.3d 584, 617 (9th Cir. 2019), *cert. denied sub nom Boise v. Martin*, 140 S. Ct. 674 (2019).

Courts in the Ninth Circuit have held there must be an initiation of the criminal process for the *Martin* rule to apply. See e.g., *Housing is a Human Right Orange County. v. County. of Orange*, No. SACV19388PAJDEX, 2019 WL 8012374 at *5 (C.D. Cal. Oct. 28, 2019) (*Martin* “...require[es] the initiation of the criminal process to state a claim for damages for an Eighth Amendment violation”). Some courts in the Ninth Circuit have held the criminal process is initiated only when the challenged action includes direct imposition of criminal penalties, such as criminal citation, arrest, or prosecution. See e.g., *Shipp v. Schaaf*, 379 F. Supp. 3d 1033, 1037

(N.D. Cal. 2019) (declining to extend *Martin* where closure of a homeless camp did not result in criminal sanctions); *see also Butcher v. City of Marysville*, No. 218CV02765JAMCKD, 2019 WL 918203, at *1-2, 7 (E.D. Cal. Feb. 25, 2019) (refusing to apply the Eighth Amendment “beyond the criminal process” where eviction and destruction of property by the city did not also include imposition of criminal sanctions). However, other courts have held the Eighth Amendment is implicated when criminal penalties result indirectly from the challenged state action, including through imposition of civil penalties that lead to criminal penalties down the line. *See e.g., Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022) (holding the city could not evade Eighth Amendment analysis by taking a “circuitous” path to criminalization by imposing civil citations which led to subsequent criminal penalties); *see also Austin v. United States*, 509 U.S. 602, 609-10 (1993) (holding the Eighth Amendment applies to civil and criminal punishment).

The Ninth Circuit has explicitly rejected the theory that the mere threat of a criminal penalty can constitute an Eighth Amendment violation. *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (“[I]t trivializes the eighth amendment to believe a threat constitutes a constitutional wrong...”); *see also Young v. City of Los Angeles*, No. CV2000709JFWRAO, 2020 WL 616363 (C.D. Cal. Feb. 10, 2020) (finding no Eighth Amendment claim where plaintiff was not criminally prosecuted but where police merely issued false tickets and reports); *see also Walton v. Terry*, 38 F. App'x 363 (9th Cir. 2002) (“...[V]erbal threats alone do not constitute cruel and unusual punishment”); *see also Sullivan v. City of Berkeley*, No. C 17-06051 WHA, 2018 WL 1471889 (N.D. Cal. Mar. 26, 2018) (declining to extend *Martin* to “the mere threat of arrest as opposed to an arrest or citation”).

However, one court in the Ninth Circuit recently included threats of punishment in its Eighth Amendment analysis, where those threats were tied to the imposition of criminal penalties.

See Coalition on Homelessness v. City & Cnty. of San Francisco, No. 22-CV-05502-DMR, 2022 WL 17905114 at 27 (N.D. Cal. Dec. 23, 2022) (granting a preliminary injunction prohibiting officers from enforcing or threatening to enforce certain laws prohibiting sitting, lying, and sleeping on public property).

Under Ninth Circuit precedent, a police department does not likely initiate the criminal process when its officers merely threaten individuals with arrest, rather than imposing criminal penalties such as citations, arrests, or prosecution. However, if further investigation into the police department's practice reveals threats of arrest lead to criminal penalties down the line, the Eighth Amendment Cruel and Unusual Punishments Clause may apply.

A. A Police Department Has Not Likely Initiated the Criminal Process Where Officers Have Not Imposed Criminal Penalties.

A police department has not likely initiated the criminal process when its officers threaten individuals experiencing homelessness with arrest but do not either actually make an arrest or impose other criminal penalties, whether directly or indirectly. Courts in the Ninth Circuit have held criminal penalties must be imposed in order to establish an Eighth Amendment claim under *Martin*. *See e.g., Catchings v. City of Los Angeles*, 2020 WL 5875100 (C.D. Cal. 2020) (finding no Eighth Amendment claim where an individual experiencing homelessness was ordered to leave a public area in which she had set up a tent, but where she did not allege to face any criminal penalties); *see also Le Van Hung v. Schaaf*, No. 19-CV-01436-CRB, 2019 WL 1779584 (N.D. Cal. Apr. 23, 2019) (finding no Eighth Amendment violation where the city cleared and cleaned a park, but where police did not arrest plaintiffs); *see also Mahoney v. City of Sacramento*, No. 220CV00258KJMCKD, 2020 WL 616302 at *3 (E.D. Cal. Feb. 10, 2020) (finding plaintiffs did

not likely have an Eighth Amendment claim because removal of a portable toilet from an encampment did not constitute a criminal penalty); *see also Young v. County of Los Angeles*, No. CV 20-00709-JFW(RAO), 2020 WL 616363, at *5 (C.D. Cal. Feb. 10, 2020) (holding the “Eighth Amendment only bars the City from criminally prosecuting Plaintiff for sleeping on public streets when he has no other place to go”); *but cf. Aitken v. City of Aberdeen*, 393 F. Supp. 3d 1075, 1082 (W.D. Wash. 2019) (requiring additional argument and briefing to determine whether the rationale in *Martin* concerning criminal sanctions extends to the civil penalties imposed by an anti-camping ordinance).

A mere threat of a criminal penalty has been found insufficient to make an Eighth Amendment claim. *See Housing is a Human Right Orange County*, No. SACV19388PAJDEX, 2019 WL 8012374; *see also Gaut*, 810 F.2d at 925. In *Housing is a Human Right Orange County*, the Central District of California found that there was no valid Eighth Amendment claim where officers merely threatened individuals with arrest but did not actually arrest them or impose a criminal penalty. *Housing is a Human Right Orange County*, No. SACV19388PAJDEX, 2019 WL 8012374, at *5. Plaintiffs, who were individuals experiencing homelessness, alleged officers violated the Eighth Amendment by rousing individuals experiencing homelessness and threatening them with arrest. *Id.* at *4-5. Plaintiffs further alleged defendants had “a custom, policy, and/or practice of encouraging its officers, employees and agents to threaten enforcement of City ordinances and citations and arrest of homeless persons for the unavoidable behavior of sleeping or having property in public based on their unhoused status.” *Id.* at *5. The court determined threats of arrest were insufficient to state an Eighth Amendment claim. *Id.* It reasoned that *Martin* “...require[es] the initiation of the criminal process to state a claim for damages for an Eighth Amendment violation,” and it determined the criminal process was not initiated by the officers’

mere threats of citation and arrest. *Id.* at 5. The court also cited to the holding in *Gaut* that it “trivializes the Eighth Amendment to believe a threat constitutes a constitutional wrong.” *Id.* at 5 (citing *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987)).

Similarly, in *Catchings v. City of Los Angeles*, the court held there was no Eighth Amendment claim where the plaintiff did not allege she was subjected to criminal penalties. *Catchings v. City of Los Angeles*, 2020 WL 5875100 (C.D. Cal. 2020). The plaintiff, a person experiencing homelessness, brought an Eighth Amendment claim against the city after she was ordered by police on two occasions to leave a public area where she had set up a tent. *Id.* at 1. On one occasion, police destroyed her property. *Id.* On another occasion, police cited her for camping outside permitted hours, but she was later acquitted due to lack of notice. *Id.* The court determined the Eighth Amendment rule in *Martin* did not apply because the plaintiff in this case did not allege to have faced any criminal penalties in connection with the incidents. *Id.* at *7.

Under Ninth Circuit precedent, it seems unlikely a police department’s officers would be held to have directly initiated the criminal process by threatening individuals experiencing homelessness with arrest without actually imposing criminal penalties. Like in *Housing is a Human Right*, if officers appear to have a “custom, policy, and/or practice” of invoking but not acting on a city statute by threatening individuals with arrest, police do not likely initiate the criminal process. Further, like in *Catchings*, police do not likely initiate the criminal process when they ask an individual experiencing homelessness to move from their public sleeping location but where a criminal penalty is not alleged to have been imposed. Under Ninth Circuit precedent, it seems unlikely threats alone, without imposition of criminal penalties, arise to a violation of the Eighth Amendment.

B. A Police Department May Indirectly Initiate the Criminal Process If Threats Lead to Criminal Penalties Down the Line.

While the above cases demonstrate the Ninth Circuit does not apply the Eighth Amendment Cruel and Unusual Punishments Clause before the criminal process is initiated, there are courts within the Ninth Circuit and in other circuits that have applied the Eighth Amendment to cases where the process of criminalization is held to be indirect. *See e.g., Johnson v. City of Grants Pass*, 50 F.4th 787, 806 (9th Cir. 2022) (a “circuitous” path to criminalization cannot evade the Eighth Amendment analysis); *Fitzpatrick v. Little*, No. 1:22-CV-00162-DCN, 2023 WL 129815 (D. Idaho Jan. 9, 2023) (while the Eighth Amendment does not apply outside the criminal context, “eventual” criminal sanctions can implicate *Martin* and *Jones*); *Phillips v. City of Cincinnati*, No. 1:18-CV-541, 2020 WL 4698800 (S.D. Ohio Aug. 13, 2020) (plaintiffs had standing to bring an Eighth Amendment claim on the basis of imminent future harm where the city had a history of issuing trespass orders warning individuals they would be subject to arrest if they remained at their camping site); *see also Jones v. City of Los Angeles*, 444 F.3d 1118, 1129 (9th Cir. 2006), *vacated as a result of settlement*, 505 F.3d 1006 (9th Cir. 2007) (the criminal process “may begin well before conviction... at arrest... at citation... or even earlier”); *but cf. Shipp v. Schaaf*, 379 F. Supp. 3d 1033, 1037 (N.D. Cal. 2019) (acknowledging the Eighth Amendment can be implicated through “indirectly” imposed criminal consequences, but declining to extend *Martin* where there was no evidence the city enforced temporary camp closures via citations or arrests).

The Ninth Circuit has held that the Cruel and Unusual Punishments Clause applies to civil citations that, later, become criminal offenses. *Johnson v. City of Grants Pass*, 50 F.4th 787, 807 (9th Cir. 2022). Plaintiffs, individuals experiencing homelessness, brought an Eighth Amendment claim against the city for issuing civil citations that later resulted in criminal penalties. *Id.* Under

a scheme of city ordinances, individuals experiencing homelessness could be issued civil citations for camping in public. *Id.* If violated twice, the citations could lead to an exclusion order. *Id.* If the exclusion order was then violated, the individual could be cited for criminal trespass. *Id.* at 806-807. The court found this “circuitous approach” to criminalization could not “so easily avoid[]” the Eighth Amendment analysis under *Martin*. *Id.* The court pointed to a Fourth Circuit decision, which held unconstitutional a two-pronged statutory scheme criminalizing drunkenness. *Id.* at 807 (citing *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264 (4th Cir. 2019) (en banc)). The statutory scheme began with preliminary civil sanctions and led to eventual criminal penalties. *Id.* at 807. The Fourth Circuit held that the fact that a city’s statutory scheme operated in two steps did not change the Eighth Amendment analysis. *Id.* The Ninth Circuit applied this reasoning to hold, “imposing a few extra steps before criminalizing the very acts *Martin* explicitly says cannot be criminalized does not cure the anti-camping ordinances’ Eighth Amendment infirmity.” *Id.* at 808.

Mere threats of arrest under a statute may implicate the Eighth Amendment when there is evidence of actual enforcement. *See Coalition on Homelessness v. City & Cnty. of San Francisco*, No. 22-CV-05502-DMR, 2022 WL 17905114 (N.D. Cal. Dec. 23, 2022). In *Coalition on Homelessness*, the Northern District of California preliminarily enjoined defendants from “enforcing or threatening to enforce” certain laws prohibiting individuals experiencing homelessness from sitting, lying, or sleeping on public property. *Coalition on Homelessness*, No. 22-CV-05502-DMR, 2022 WL 17905114. The court found the Eighth Amendment was implicated where officers issued citations and made arrests, but also where officers separately ordered individuals experiencing homelessness to “move along” under threat of citation and arrest without first providing viable access to shelter. *Id.* In its order enjoining the defendants, the court

did not explain its rationale for including threats of arrest in its Eighth Amendment analysis. *See id.* It seems possible that, given the court's references throughout its order to instances in which the defendants imposed criminal penalties, officers' threats implicated the Eighth Amendment because of their apparent likeliness to be acted on.

Whether a police department's practice of threatening individuals with arrest leads to criminal sanctions down the line is a fact specific analysis. However, it is plausible that, like in *Grants Pass* and *Coalition on Homelessness*, officers may issue orders to individuals experiencing homelessness under threat of arrest that later result in criminal penalties. For example, police departments may have a practice of following threats of arrest with the issuance of trespass orders, which if violated result in criminal citations. Further, if officers log or run individuals' names as part of the process of asking individuals to move sleeping locations, officers may arguably use the practice of waking individuals as a means to initiate the criminal process. Further investigation would be needed to determine if the practice results in indirect criminalization.

CONCLUSION

Under Ninth Circuit precedent, it seems unlikely that a police department's practice of officers waking individuals and ordering them to move under threat of arrest, without the imposition of criminal penalties, amounts to a violation of the Eighth Amendment. However, if the facts are such that the threats lead to criminal penalties down the lines, the practice may be argued to be part of an indirect approach to criminalization of homelessness, implicating the Eighth Amendment Cruel and Unusual Punishments Clause.

Korinne Dunn

1338 Chestnut St, Apt 616 | Philadelphia, PA 19107 | (812) 340-3768 |
korinned@pennlaw.upenn.edu

WRITING SAMPLE

I drafted the attached excerpted writing sample for an assignment in my second semester Legal Practice Skills course. The assignment required writing a summary judgment brief advocating on behalf of a defendant school district against a 42 U.S.C. § 1983 claim. I conducted all the research necessary for the assignment. Per the assignment's instructions, the brief could not exceed twenty pages.

INTRODUCTION

Principal Jane Sylvester and Superintendent Emily Su are public employees of the Gateway School District. In response to a state law compelling schools to address threats to health and safety that cyberbullying poses against students, the Gateway School District formed a task force to address the problem.

The task force, made up of school officials, students, parents, and community members, created a policy for protecting students against the psychological harms of cyberbullying. The purpose of the policy was to educate students about the serious mental and emotional harm cyberbullying can exact. Because student athletes had recently been implicated in significant problems with cyberbullying in the district, the policy sought to incentivize student athletes not to engage in the harmful practice.

Senanayake was a student athlete who knowingly and voluntarily participated in the Gateway anti-cyberbullying policy. He allowed Ms. Sylvester to search his phone in accordance with the policy. After coming upon evidence that Senanayake had violated further school rules that led her to believe his activity posed a threat to student health and safety, Ms. Sylvester conducted a second search of his phone. She uncovered evidence that led her to believe he was engaged in the sale of contraband vaping pods to other students at school. This led to Senanayake's dismissal from the school water polo team. Senanayake is now suing under 42 U.S.C. § 1983 for a violation of his Fourth Amendment rights.

As a matter of law, the Gateway School District, Ms. Sylvester, and Ms. Su (the "Defendants") are entitled to summary judgment. The record demonstrates that the anti-cyberbullying policy was central to a significant government interest in student health and safety. This interest outweighed students' already reduced expectations of privacy at school and made the

intrusion on that privacy reasonable. Evidence of further potential threats to student health and safety, though of a different kind than addressed in the policy, justified Ms. Sylvester in undertaking a second search of Senanayake's cell phone. As a result, the Defendant's Summary Judgment Motion should be granted.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Every weekday morning since she rose to principalship in 2012, Principal Jane Sylvester has begun her school day by checking in on the students of Gateway Central High School. (Sylvester Deposition ("Sylvester Dep."), attached as Ex. A, 9:4-6). Before the ring of the first period bell, she studies each sleepy face that enters the doors of her building, and with her decades of professional skill, manages to draw out from teenagers smiles and hellos. She greets, celebrates, high-fives, reassures, deescalates, advises, and inquires, and all the while, she watches. She observes. She looks for signs that one of her students, who she has devoted her entire working life to nurturing and protecting, might be in need.

Within the last decade, Missouri passed a law requiring public schools to adopt anti-bullying policies and to provide requirements for investigating bullying at school. (Sylvester Dep. 4:22-30). One of the most insidious forms of this danger, cyberbullying, had wreaked havoc on Gateway School District's students and families for years. (Sylvester Dep. 3:23-27). Ms. Sylvester has faced the issue head on since she took lead of Gateway Central High School in 2012. (Sylvester Dep. 3:8-13). From the early days of her principalship, teachers reported to her that cyberbullying was rampant at the school. (Sylvester Dep. 3:23-25). Teachers, she recalls thinking back on those days, "could barely keep order in their classroom" following incidents of cyberbullying. (Sylvester Dep. 3:30-31). These issues escalated to the Spring and Fall of 2016 when Gateway Central High

School did their best to make two families whole by confidentially settling two lawsuits that stemmed from cyberbullying. (Sylvester Dep. 4:9-12).

In response to this district-wide student safety crisis, and in adherence to the Missouri state law, Gateway School District assembled a task force to tackle the issue of cyberbullying, and to develop a uniform, district-wide policy to ensure student safety. (Gateway School District Anti-Cyberbullying Task Force Report (“Task Force Report”), attached as Exhibit B, at 1). The task force was made up of those stakeholders with the most interest in the policy’s success and meaningful application: parents, students, administrators, and teachers. (Task Force Report at 1). The effectiveness of the task force was bolstered, too, by inclusion of experts from the community, representing the Gateway District Attorney’s Office, the Gateway Department of Public Safety, and the Missouri Department of Mental Health. (Task Force Report at 1).

The task force considered research findings that confirmed what experienced school officials already knew: cyberbullying was a distinct danger to the psychological well-being of students, and in order to ensure students were safe at school, measures must be taken to protect them. (Task Force Report at 1). In their report, the task force cited to data showing that smartphone technology, which 80% of high school students have regular access to, has made bullying more rampant because of the ease and anonymity with which impulses can be acted upon. (Task Force Report at 1). Worse, the effects of this rampant bullying are associated with high levels of psychological distress among teenagers. (Task Force Report at 1).

In its analysis of the research, the task force found that the most “fertile breeding ground” for cyberbullying was on interscholastic sports teams, due to their “competitive, tight-knit culture.” (Task Force Report at 2). Both lawsuits the Gateway School District faced in 2016 arose out of cyberbullying incidents school officials believe to have originated with Gateway Central High

School sports teams. (Task Force Report at 2). To address these safety concerns, the task force proposed that the District adopt a policy specifically aimed at student athletes. (Task Force Report at 2).

The policy the task force proposed, and which the Gateway School District unanimously adopted, emphasizes the safety and mental health of students and the importance of preserving an educational environment at school. (Student-Athlete Anti-Cyberbullying Policy (“Policy”), attached as Exhibit E, at 1). It reminds student athletes that they carry a responsibility to “set the highest possible examples of conduct and sportsmanship.” (Policy at 1). It sets out two purposes: “1.) To educate students about the serious mental and emotional harm that can be a consequence of cyberbullying. 2.) To offer students the privilege of competing in interscholastic sports as an incentive to deter them and discourage others from engaging in cyberbullying.” (Policy at 1).

Under the policy, student athletes in the district must:

Disclose to their school the names of all electronic messaging applications (including but not limited to WhatsApp, iMessage, Facebook Messenger, Instagram Direct Messages, Twitter Direct Messages) or groups that they use or belong to; and 2.) Allow the school to search those applications on student cellular phones or electronic devices at random throughout the season...

(Policy at 2). The policy authorizes school administrators to hold any student athlete’s electronic device for the duration of the school day. (Policy at 2). The consequences for violating the policy include, for the first offense, meeting with a school principal, coach, and guidance counselor for the second offense, being suspending from sports for 15 days; and for the third offense, being suspended from sports for the remainder of the school year. Policy at 2-3. Student athletes and parents are educated about the policy at the start of each school year, and each student and their guardian consents to policy by returning a signed copy of it to the school. (Policy at 1). The policy designates the principal of each high school as the person charged with implementing and carrying

out the policy. (Policy at 2). The policy was put into place starting in the 2017-2018 academic year. (Gateway School District School Board Meeting Minutes (“Minutes”), attached as Exhibit F, at 2).

On May 4, 2020, Ms. Sylvester greeted students at the doors of her school. (Sylvester Dep. 9:4-6). She noticed a group of students gathered around a cell phone. (Sylvester Dep. 9:6-10). To preserve an educational environment, students are not permitted to use their phones during school hours. (Sylvester Dep. 9:8-9). Ms. Sylvester noted that the student displaying his phone was senior Keshara Senanayake, an elite student athlete and someone who she knew to be “a bit tough on the nerdy kids,” though she had no reason at the time to suspect him of wrongdoing beyond breaking the rule of having his phone out during school hours. (Sylvester Dep. 9:22-23, 10:2-5). In compliance with the Student-Athlete Anti-Cyberbullying Policy, Ms. Sylvester took the opportunity to conduct one of the random confiscations and searches central to the success of the school’s safety policy. (Sylvester Dep. 9:26-28). Keshara agreed to the confiscation and search, which he had consented to at the beginning of the school year and for the duration of the water polo season. (Senanayake Deposition, (“Senanayake Dep.”), attached as Exhibit G, 2:19-22).

Ms. Sylvester looked up on her computer which messaging applications Senanayake had disclosed, then searched those applications: iMessages, Instagram, Twitter, Snapchat, and What’s App. (Sylvester Dep. 11:14-20). In those applications, she found nothing that appeared threatening to the safety of other students or to Senanayake himself, and nothing that indicated he had been engaged in cyberbullying. (Sylvester Dep. 11:22-26). At the end of the school day, when Ms. Sylvester picked up the phone to return it to Senanayake, she saw a suspicious notification flash on the home screen: a Venmo notification indicated that another student, Coco Xu, who had been in the circle of friends looking at Senanayake’s phone that morning, had sent Keshara \$10.

(Sylvester Dep. 11:22-26). Included in the notification was a message featuring an emoji of a puff of smoke and a thank-you note for the “pod.” (Sylvester Dep. 12:8-15). As a professional educator with years of experience working with youth, the notification led Ms. Sylvester to the undeniable suspicion that Keshara might be selling vaping pods to other students, and that he might be doing so on school grounds. (Sylvester Dep. 12:23-25). Vaping had recently become a health and safety crisis of its own on the school’s campus. (Sylvester Dep. 12:30). She knew she couldn’t turn a blind eye to a violation of school policy that put students’ health in danger. (Sylvester Dep. 12:20-23).

Ms. Sylvester realized that this had become an issue separate from that of cyberbullying, but still central to the cyberbullying policy’s purpose: the pressing issue of student safety. (Sylvester Dep. 12:30-31). In fulfillment of her duty as principal, responsible for the administration and implementation of all applicable federal, state, and local laws, rules, policies, and procedures for the high school, Ms. Sylvester began a second search of Ms. Senanayake’s phone. (Sylvester Dep. 13:26-31). She realized that whatever was behind the Venmo tab was what Senanayake had been showing his friends earlier that morning, including Coco Xu, and that it would likely reveal the meaning of Xu’s message and evidence of further school violations. (Sylvester Dep. 14:29-30). When she pressed the home button on the phone to close out of the Venmo tab, directly behind it was an open Notes application. (Sylvester Dep. 15:1-2). She read through the entries in the application, which included a to-do list, a homework assignment, and note to Senanayake’s partner. (Sylvester Dep. 15-16). Soon, she discovered a log of payments owed and received for “mint” flavor vaping pods, a kind which she had been forced to confiscate many times from students at the school. (Sylvester Dep. 16:28-31).

Following these two searches, Ms. Sylvester called Senanayake into her office, where he admitted to vaping and to selling Juul pods to other students. (Sylvester Dep. 17:10-13). He was suspended from the water polo team for the rest of the season. (Sylvester Dep. 17:13-14). As a result of this penalty, a school also rescinded a scholarship offer. (Sylvester Dep. 17:16-19).

Senanayake filed suit against Principal Jane Sylvester, Superintendent Emily Su, and the Gateway School District under 42 U.S.C. § 1983, alleging a violation of his Fourth and Fourteenth Amendment rights. The Defendants now ask this Court to grant summary judgment in their favor.

STANDARD FOR SUMMARY JUDGMENT

Courts shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A genuine dispute of material fact occurs when there is sufficient evidence such that a reasonable jury could find for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Material facts must be viewed in a light most favorable to the nonmovant. *Id.*; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). If the non-movant fails to make a sufficient showing on a single element of her case, the moving party is entitled to summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

B. MS. SYLVESTER'S SECOND SEARCH OF SENENAYKE'S PHONE WAS CONSTITUTIONAL BECAUSE IT WAS BASED ON EVIDENCE OF THREATS TO STUDENT HEALTH AND SAFETY.

Ms. Sylvester initiated a second search because the notification on Senanayake's phone alerted her to potential threats to student health and safety and therefore the search was reasonable. Further, it was reasonable for her to believe she might uncover further evidence of the

violation on the Notes app, and therefore the scope of the search was also reasonable. A suspicion-based search is reasonable and thus constitutional when it is justified at its inception and reasonably related in scope to the circumstances which justified the initial search. *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985). A search is reasonable in scope if the measures adopted are reasonably related to the objectives of the search and not excessively intrusive considering the age and sex of the student and the nature of the infraction. *Id.* at 342.

1. Ms. Sylvester's Second Search of Senanayake's Phone Was Justified At Its Inception Because She Had Reasonable Grounds to Believe That She Would Discover Evidence of Senanayake Violating School Rules.

A report from another student is reasonable grounds for a school official to believe a search might uncover evidence of a violation of school policy. *Safford Unified School District Number 1 v. Redding*, 557 U.S. 365, 369 (2009); *see also Jackson v. McCurry*, 762 F. App'x 919, 926 (holding that a report of cyberbullying through the distribution of a meme by students was sufficient justification for a search of a student's cell phone because the official had reason to believe evidence of the bullying would be found on the student's camera roll); but *cf. G.C. v. Owensboro Public Schools*, 711 F.3d 623, 626 (6th Cir. 2013) (holding that a cell phone search was not justified at inception because a school counselor's general background information about a student's mental health was not sufficient reason to believe evidence that the student was violating school rules would be found on the phone). In *Safford*, school officials searched a 13-year-old middle school girl because they suspected her of having ibuprofen on her person in violation of school rules. *Safford*, 557 U.S. at 369 (2009). The principal's suspicion arose because another student suggested to the principal that the plaintiff was distributing pills at school. *Id.* at 372. The court held that this report was reasonable grounds for suspicion that justified a search of the student's backpack, and that the backpack was a reasonable place to suspect to find the pills. *Id.* at 374.

Here, Ms. Sylvester had reason to believe Senanayake was involved in the distribution of contraband on school grounds based on a report from another student. Like in *Safford*, where the principal's suspicion was formed after receiving reports from students, the notification appearing on Senanayake's phone functioned in a similar and an even more compelling way, as Ms. Sylvester essentially witnessed what she believed to be a violative transaction take place. (Sylvester Dep. 11:22-26). This was enough to justify her suspicion that Senanayake was violating school policy and to conduct a search of his phone.

Because of the immense amount of private information they often contain, cell phones are afforded higher levels of privacy than other physical objects of a search, though they are not excluded from search in the school context. *See Riley v. California*, 573 U.S. 373, 401 (holding that, in the criminal context, though cell phones are not immune from search, a warrant is required for a police officer to conduct one). However, a student's expectation of privacy in their phones is decreased when they bring and display cellphones in defiance of school policy, which may provide school officials reason to suspect there may be evidence of a school violation within them. *J.W. v. Desoto County School District.*, No. 2:09-CV-00155-MPM, 2010 WL 4394059 at *4 (N.D. Miss. Nov. 1, 2010). In *Desoto*, a school policy prohibited students from possessing or using phones at school. *Id.* at *1. The plaintiff, a seventh grader at the school and aware of this policy, used his cell phone in class to read text messages from his father. *Id.* School officials confiscated and searched his phone, though the student was not at that time suspected of any wrongdoing apart from having and using the phone in violation of school rules. *Id.* The court held that the search did not impede on the student's reasonable expectation of privacy, because a student's decision to violate school rules by bringing and displaying contraband results in a diminished privacy expectation in respect to the contraband. *Id.* at *4.

2. Ms. Sylvester's Second Search of Senanayake's Phone Was Reasonable In Scope Because Searching for Information in Venmo and the Notes App was Related to Finding Evidence About Vape Sales on Campus Was Not Excessively Intrusive.

A search reasonable in scope is one that is likely to uncover evidence of an infraction. *See Safford*, 557 U.S. at 369 (2009) (holding that the search of a 13-year-old student's backpack and outer clothes was reasonable in scope because a school official could have expected to find evidence of contraband there). In *T.L.O.*, a school official conducted a search of a student's purse after discovering her smoking in the bathroom. *T.L.O.*, 469 U.S. at 325. After beginning an initial search of the purse for cigarettes, the official continued to search the purse after discovering rolling papers, which made him suspicious that the student may also possess items related to marijuana. *Id.* at 325. He proceeded to search the purse further and found marijuana and a pipe. *Id.* He also searched a separate zippered compartment of the purse, where he found and examined letters and a list of students' names. *Id.* at 347. The court held that the search was reasonable in scope, because the initial discovery of rolling papers led to the official's reasonable suspicion that the student might have items related to marijuana, and this suspicion justified his extension of the search to the separate zippered pouch. *Id.*

Here, Ms. Sylvester had reason to believe that by searching Senanayake's open applications, she would discover evidence of a school violation. Like the discovery of rolling papers in *T.L.O.* that clued the school official into the student's possible possession of marijuana, the Venmo notification alluding to the transfer of vape pods alerted Ms. Sylvester to the possibility that Senanayake might be involved in a violation of the school rule prohibiting vaping devices on campus. (Sylvester Dep. 11:22-26). Like the official in *T.L.O.* who searched through multiple mediums of information in the purse one-by-one for further evidence, including personal notes, Ms. Sylvester searched through multiple mediums of information in the form of applications, including the Notes app. (Sylvester

Dep. 15:1-2). Because her search was connected to the purpose of the initial search of looking for evidence of a school violation, it was reasonable in scope.

A search is not excessively intrusive if it is necessary for a school official to expand the search to decipher the meaning of suspicious evidence. *Jackson v. McCurry*, 762 F. App'x 919, 927 (11th Cir. 2019). In *Jackson*, school officials searched a high school senior's cell phone after it was reported that she was sending bullying texts to a specific student about another student. *Id.* The contacts in the student's phone were labeled with emojis and nicknames, so the school official had to ask her who certain messages were sent to. *Id.* The official was aware that students were able to disguise their messages and recipients in this way. *Id.* The official expanded the search by reading not only text messages from the student the messages were allegedly sent to, but also by reading text messages from the student's family members, ex-boyfriend, and friends. *Id.* The court held that the scope of the search was reasonably related to its purpose. *Id.* Because the official was aware that the student could disguise her contacts and their messages, it was reasonable for the school official to expand his search to include messages from those unclear contacts. *Id.*

Here, expanding the search of the phone to other applications to determine what the message from Coco Xu referred to was reasonably related to the purpose of the search, because Ms. Sylvester did so with an awareness of how students can disguise information in their phones. Like the cryptic contact names in *Jackson*, the meaning of the notification that flashed across Senanayake phone was not immediately clear to Ms. Sylvester. (Sylvester Dep., 12:8-15). Like the school official in *Jackson* who searched through messages from different contacts because of knowledge that evidence of bullying texts may have been hidden under deceptive contact names, Ms. Sylvester searched through multiple applications with an awareness of how iPhones can hide information. (Sylvester Dep., 14:26-30). She was aware that whatever was behind the Venmo app

was likely what Senanayake had been showing to Coco Xu earlier that morning. (Sylvester Dep., 14:26-30). Because her search of the applications was connected to deciphering the meaning of the message, it was reasonable in scope.

CONCLUSION

The defendants should be granted summary judgment because they did not violate Senanayake's Fourth Amendment rights. Instead, the defendants acted to fulfill their duties under the law to protect students from threats to their health and safety. The search policy was constitutional because it reflected a government interest that was legitimate and that outweighed the reduced privacy expectation of student athletes. The second search was justified at inception because it was conducted under suspicion of a violation of school rules. It was reasonable in scope because all stages of the search were related to the purpose of protecting student health and safety and investigating potential violations of school rules. There are no material disputes of fact. Thus, the defendants' motion for summary judgment should be granted.

Applicant Details

First Name	Andrew
Last Name	Morales
Citizenship Status	U. S. Citizen
Email Address	morales.a24@law.wlu.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>309 S Main St Apt #9</div> <div>City</div> <div>Lexington</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>24450</div> </div> </div>
Contact Phone Number	918-625-7069

Applicant Education

BA/BS From	Westminster College
Date of BA/BS	May 2020
JD/LLB From	Washington and Lee University School of Law
	http://www.law.wlu.edu
Date of JD/LLB	May 10, 2024
Class Rank	50%
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	National Environmental Law Moot Court Competition Robert J. Grey, Jr. Negotiations Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **Yes**
Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Belmont, Elizabeth
belmontb@wlu.edu
Peppers, Todd
pepperst@wlu.edu
Fraley, Jill
fraleyj@wlu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Andrew Morales
309 South Main Street, Apt. 9
Lexington, VA 24450

June 20, 2023

The Honorable James O. Browning
333 Lomas Blvd NW, Suite 660
Albuquerque, NM 87102

Dear Judge Browning,

I am a rising third-year student at Washington and Lee University School of Law. I am writing to apply for a 2024–2025 term clerkship in your chambers.

Enclosed please find my resume, law school and undergraduate transcripts, and writing samples. The first writing sample is a brief in support of a motion for summary judgment that I prepared for my Civil Litigation Practicum this past semester. The second writing sample is a motion *in limine* to admit expert testimony that I prepared for my Evidence class during the Fall 2022 semester. Also enclosed are letters of recommendation from Professors Todd Peppers (540.761.3988), Beth Belmont (540.460.3421), and Jill Fraley (859.321.6242).

If there is any other information that would be helpful to you, please let me know. Thank you for your consideration.

Respectfully,

Andrew Morales

ANDREW C. MORALES

309 South Main Street Apartment #9 | Lexington, VA 24450 | 918.625.7069 | morales.a24@law.wlu.edu

EDUCATION

Washington and Lee University School of Law, Lexington, VA

J.D. Candidate, May 2024

Academics: GPA (cumulative): 3.525 (Top 40%); GPA (2L): 3.821; Highest Grade in Evidence

Activities: Finalist, Robert J. Grey, Jr. Negotiations Competition
National Environmental Law Moot Court Competition Team
Latin American Law Student Association (LALSA)

3L Externship: Chambers of U.S. District Judge Robert S. Ballou

Research: Assistant to Professor Todd C. Peppers (research on Chief Justice Warren Burger)

Westminster College, Fulton, MO

B.A., Biochemistry and Philosophy, May 2020

Honors: Alpha Chi Honor Society (Initiated as Top 5% of Junior Class)

Activities: Undergraduate Scholars Forum, Physiology and Biochemistry Research
Westminster Seminar Mentor (Selected by Organic Chemistry Professor)
WestMo Tutors (Selected by Professor), Tutor for Statistics and Calculus I
President of Pre-Healthcare Professionals Association
Freshman Vice President of Student Government Association
Student Ambassador

EXPERIENCE

Huff, Powell & Bailey, LLC, Atlanta, GA

Summer Associate, May – August 2023

Baum, Glass, Jayne, Carwile & Peters, PLLC, Tulsa, OK

Summer Associate, June – August 2022

Worked in trial and appellate practice areas of complex commercial litigation, insurance defense, and energy law. Conducted legal research, wrote memorandums on critical legal questions, and attended depositions.

Secrest, Hill, Butler & Secrest, PC, Tulsa, OK

Summer Associate, May – June 2022

Worked in trial and appellate practice areas of products liability defense, premises liability defense, and medical malpractice defense. Conducted legal research, drafted dispositive motions and support briefs, wrote memorandums on critical legal questions, attended depositions and wrote deposition summaries, conducted opposition research on plaintiffs' expert witnesses for cross-examination, and attended hearings.

Janine Billings State Farm Agency, Tulsa, OK

Office Manager, Marketing, Customer Service, January – July 2021

Executed leadership role in general management during absence of agent. Managed payroll and banking, analyzed and delegated primary client concerns, and revamped marketing strategy via social media.

Lululemon, Tulsa, OK

Educator, August – February 2020

Greeted and appraised guest needs, remedied past product concerns, and educated guests on product details.

INTERESTS

Running, Weightlifting, Pick-Up Basketball

Philosophy of Mind, Russian Literature, Finding the Best Burger in Town

Print Date: 06/10/2023

Page: 1 of 2

Student: Andrew Christian Morales

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-4703

Entry Date: 08/30/2021

Date of Birth: 04/10/XXXX

Academic Level: Law

2021-2022 Law Fall

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	B+	4.00	4.00	13.32	
LAW 140	CONTRACTS	B+	4.00	4.00	13.32	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 165	LEGAL WRITING I	B	2.00	2.00	6.00	
LAW 190	TORTS	B	4.00	4.00	12.00	

Term GPA: 3.193

Totals:

14.50 14.50 46.31

Cumulative GPA: 3.193

Totals:

14.50 14.50 46.31

2021-2022 Law Spring

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	A-	4.00	4.00	14.68	
LAW 150	CRIMINAL LAW	B-	3.00	3.00	8.01	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 166	LEGAL WRITING II	B	2.00	2.00	6.00	
LAW 179	PROPERTY	B+	4.00	4.00	13.32	
LAW 195	TRANSNATIONAL LAW	A-	3.00	3.00	11.01	

Term GPA: 3.314

Totals:

16.50 16.50 54.68

Cumulative GPA: 3.257

Totals:

31.00 31.00 100.99

2022-2023 Law Fall

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 642	Law and Geography Seminar	A-	2.00	2.00	7.34	
LAW 685	Evidence	A	3.00	3.00	12.00	
LAW 743	Healthcare Law	A	3.00	3.00	12.00	
LAW 775	Environmental Law	A	3.00	3.00	12.00	
LAW 865	Negotiations and Conflict Resolution Practicum	A-	2.00	2.00	7.34	

Term GPA: 3.898

Totals:

13.00 13.00 50.68

Cumulative GPA: 3.447

Totals:

44.00 44.00 151.67

Print Date: 06/10/2023

Page: 2 of 2

Student: Andrew Christian Morales

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116

**2022-2023 Law Spring**

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	A-	3.00	3.00	11.01	
LAW 716	Business Associations	B+	4.00	4.00	13.32	
LAW 725	Conflict of Laws	A	3.00	3.00	12.00	
LAW 829	Civil Litigation Practicum	A	5.00	5.00	20.00	
Term GPA: 3.755			Totals:	15.00	15.00	56.33
Cumulative GPA: 3.525			Totals:	59.00	59.00	208.00

2023-2024 Law Fall

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 700	Federal Jurisdiction and Procedure		3.00	0.00	0.00	
LAW 707L	Skills Immersion: Litigation		2.00	0.00	0.00	
LAW 713	Sales		3.00	0.00	0.00	
LAW 811	Appellate Advocacy Practicum		4.00	0.00	0.00	
LAW 934	Federal Judicial Externship		2.00	0.00	0.00	
LAW 934FP	Federal Judicial Externship: Field Placement		2.00	0.00	0.00	
Term GPA: 0.000			Totals:	16.00	0.00	0.00
Cumulative GPA: 3.525			Totals:	59.00	59.00	208.00

Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	59.00	59.00	3.525
External:	0.00	0.00	
Overall:	59.00	59.00	3.525

Program: Law

End of Official Transcript

WASHINGTON AND LEE UNIVERSITY TRANSCRIPT KEY

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1796), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.

The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.

The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

Official transcripts, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. ***In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.***

Undergraduate

Degrees awarded: Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commerce (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

Grade	Points	Description
A+	4.00	} Superior.
A	4.00	
A-	3.67	
B+	3.33	} Good.
B	3.00	
B-	2.67	
C+	2.33	} Fair.
C	2.00	
C-	1.67	
D+	1.33	} Marginal.
D	1.00	
D-	0.67	
E	0.00	Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations
F	0.00	Unconditional failure.

Grades not used in calculations:

I	-	Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student.
P	-	Pass. Completion of course taken Pass/Fail with grade of D- or higher.
S, U	-	Satisfactory/Unsatisfactory.
WIP	-	Work-in-Progress.
W, WP, WF	-	Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew.

Grade prefixes:

R	Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-).
E	Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above.

Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

Dean's List: Full-time students with a fall or winter term GPA of at least 3.400 and a cumulative GPA of at least 2.000 and no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

Honor Roll: Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

University Scholars: This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

Law

Degrees awarded: Juris Doctor (JD) and Master of Laws (LLM)

Numerical	Letter	Grade*	Grade**	Points	Description
4.0	A			4.00	
	A-			3.67	
3.5				3.50	
	B+			3.33	
3.0	B			3.00	
	B-			2.67	
2.5				2.50	
	C+			2.33	
2.0	C			2.00	
	C-			1.67	
1.5				1.50	This grade eliminated after Class of 1990.
	D+			1.33	
1.0	D			1.00	A grade of D or higher in each required course is necessary for graduation.
	D-			0.67	Receipt of D- or F in a required course mandates repeating the course.
0.5				0.50	This grade eliminated after the Class of 1990.
0.0	F			0.00	Receipt of D- or F in a required course mandates repeating the course.

Grades not used in calculations:

-	WIP	-	Work-in-progress. Two-semester course.
I	I	-	Incomplete.
CR	CR	-	Credit-only activity.
P	P	-	Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade.
-	H	-	Honors. Top 20% in Honors/Pass/Not Passing courses.
F	-	-	Fail. Given for grade below 2.0 in graded course taken Pass/Fail.
-	NP	-	Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course.

* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.

** Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

Course Numbering Update: Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar
Washington and Lee University
Lexington, Virginia 24450-2116
phone: 540.458.8455
email: registrar@wlu.edu


University Registrar

ID : 1631380

Name : Andrew Christian Morales

SSN : XXX-XX-4703

Address : 1410 E 43rd Ct

Tulsa, OK 74105

Westminster College

501 Westminster Avenue

Fulton, MO 65251-1299

7/1/2022 02:46:16 pm

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
Transfer Credit : Fall Transfer								

Organization : TRANSFERORGANIZATION

BIO-108	Intro to Biol Prin/Lab	CR	CR	4.00	4.00	0.00	0.00	
ENG-103	Academic Writing	CR	CR	3.00	3.00	0.00	0.00	
Term Totals :				7.00	7.00	0.00	0.00	0.0000
Career Totals :				7.00	7.00	0.00	0.00	0.0000

Advanced Placement Credit - The College Board

Transfer Credit : Fall Transfer

Organization : TRANSFERORGANIZATION

MAT-111	College Algebra	TR	TR	3.00	3.00	0.00	0.00	
Term Totals :				3.00	0.00	0.00	0.00	0.0000
Career Totals :				10.00	10.00	0.00	0.00	0.0000

Tulsa Community College - Tulsa, OK

Spring 2015

2014-2015 : Summer - Second Session

CHM-105-O	Intro to Chemistry	LT	A	3.00	3.00	3.00	12.00	
Term Totals :				3.00	3.00	3.00	12.00	4.0000
Career Totals :				13.00	13.00	3.00	12.00	4.0000

2015-2016 : Fall Semester

BIO-124-B	Biodiversity (For Sci Majors)	LT	A	3.00	3.00	3.00	12.00	
BIO-125-B	Biodiversity Lab	LT	A	1.00	1.00	1.00	4.00	
CHM-114-C	General Chemistry 1	LT	A	3.00	3.00	3.00	12.00	
CHM-115-C	General Chemistry I Lab	LT	A	1.00	1.00	1.00	4.00	

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2015-2016 : Fall Semester								

LST-101-B	The Leader Within	LT	A	1.00	1.00	1.00	4.00	
MAT-114-D	Elementary Statistics	LT	A	3.00	3.00	3.00	12.00	
WSM-101-A	Westminster Seminar	LT	A	3.00	3.00	3.00	12.00	
Honor : Dean's List				Term Totals : 15.00 15.00 15.00 60.00 4.0000				
				Career Totals : 28.00 28.00 18.00 72.00 4.0000				

2015-2016 : Winter Term

HIS-104-O	History of US since 1877	LT	A	3.00	3.00	3.00	12.00	
Term Totals :				3.00	3.00	3.00	12.00	4.0000
Career Totals :				31.00	31.00	21.00	84.00	4.0000

2015-2016 : Spring Semester

BIO-114-B	Biolog Processes (For Sci M	LT	A	3.00	3.00	3.00	12.00	
BIO-115-D	Biological Processes Lab	LT	A	1.00	1.00	1.00	4.00	
CHM-124-C	General Chemistry II	LT	A	3.00	3.00	3.00	12.00	
CHM-125-B	General Chemistry II Lab	LT	A	1.00	1.00	1.00	4.00	
LST-180-A	College Tutoring Skills I	LT	A	2.00	2.00	2.00	8.00	
MAT-124-A	Calculus I	LT	CR	5.00	5.00	0.00	0.00	
Honor : Dean's List				Term Totals : 15.00 15.00 10.00 40.00 4.0000				
				Career Totals : 46.00 46.00 31.00 124.00 4.0000				

Page : 1 of 4

* MEANS REPEAT OF A COURSE

() MEANS COURSE CREDIT NOT COUNTED

In accordance with the Family Educational Rights and Privacy Act of 1974, this transcript is released to you for your use on the condition that you will not permit a third party to have access to it without the written consent of the student.

CONFIDENTIAL RECORD
IF YOU HAVE NO FURTHER USE
FOR THIS RECORD PLEASE
DESTROY IT

 Kristin Guerrant, Registrar
Westminster College
REGISTRAR

This transcript is official only if it is printed on safety paper, signed by the Registrar, and impressed with the Westminster College seal. See the reverse side for an explanation of credits and grades.


REGISTRAR

ID : 1631380

Name : Andrew Christian Morales

SSN : XXX-XX-4703

Address : 1410 E 43rd Ct

Tulsa, OK 74105

Westminster College

501 Westminster Avenue

Fulton, MO 65251-1299

7/1/2022 02:46:16 pm

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2015-2016 : Summer - First Session								
HIS-103-0	History of US to 1877	LT	A	3.00	3.00	3.00	12.00	
Term Totals :				3.00	3.00	3.00	12.00	4.0000
Career Totals :				49.00	49.00	34.00	136.00	4.0000
2015-2016 : Summer - Second Session								
SOC-111-0	Intro to Sociology	LT	A	3.00	3.00	3.00	12.00	
Term Totals :				3.00	3.00	3.00	12.00	4.0000
Career Totals :				52.00	52.00	37.00	148.00	4.0000
2016-2017 : Fall Semester								
CHM-304-A	Inorganic Chemistry (WIO)	LT	A	3.00	3.00	3.00	12.00	
CHM-314-B	Organic Chemistry I	LT	A	3.00	3.00	3.00	12.00	
CHM-315-B	Organic Chemistry II Lab	LT	A	1.00	1.00	1.00	4.00	
LST-280-A	College Tutoring Skills II	LT	A	2.00	2.00	2.00	8.00	
PHL-221-A	History Ancient/Medieval Phil	LT	A	3.00	3.00	3.00	12.00	
PHY-201-B	Physics I	LT	A	4.00	4.00	4.00	16.00	
Honor : Dean's List								
Term Totals :				16.00	16.00	16.00	64.00	4.0000
Career Totals :				68.00	68.00	53.00	212.00	4.0000
2016-2017 : Spring Semester								
BIO-320-A	Bio Belize Orientation	LT	B	1.00	1.00	1.00	3.00	
CHM-324-A	Organic Chemistry II	LT	A	3.00	3.00	3.00	12.00	
CHM-325-A	Organic Chemistry II Lab	LT	A	1.00	1.00	1.00	4.00	
CHM-410-A	Medicinal Chemistry	LT	A	3.00	3.00	3.00	12.00	
LST-380-A	College Tutoring III	LT	A	2.00	2.00	2.00	8.00	

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2016-2017 : Spring Semester								
PHL-222-A -I	History of Modern Phil (WI)	LT	A	3.00	3.00	3.00	12.00	
PHY-212-C	Physics II	LT	A	4.00	4.00	4.00	16.00	
WSM-210-A	Westminster Seminar Mentc	LT	A	1.00	1.00	1.00	4.00	
Honor : Dean's List								
Term Totals :				18.00	18.00	18.00	71.00	3.9400
Career Totals :				86.00	86.00	71.00	283.00	3.9900
2016-2017 : May Term								
BIO-321-A	Biology in Belize Trip	PF	CR	3.00	3.00	0.00	0.00	
Term Totals :				3.00	3.00	0.00	0.00	0.0000
Career Totals :				89.00	89.00	71.00	283.00	3.9900
2017-2018 : Fall Semester								
BIO-203-A	Human Anatomy	LT	B	4.00	4.00	4.00	12.00	
LAT-101-A	Elementary Latin I	LT	WP	4.00	0.00	0.00	0.00	
PHL-242-A -I	Biomedical Ethics WI	LT	A	3.00	3.00	3.00	12.00	
PHL-410-A	Philosophy of Mind & Person	LT	A-	3.00	3.00	3.00	11.10	
WSM-301-A	Westminster Seminar Mentc	LT	A	2.00	2.00	2.00	8.00	
Term Totals :				16.00	12.00	12.00	43.10	3.5900
Career Totals :				105.00	101.00	83.00	326.10	3.9300
2017-2018 : Spring Semester								
BIO-370-A -I	Physiology (WI)	LT	B	4.00	4.00	4.00	12.00	
BIO-404-A -I	Biochemistry (WI)	LT	A-	4.00	4.00	4.00	14.80	
PHL-102-A	World Religions	LT	B	3.00	3.00	3.00	9.00	

Page : 2 of 4

* MEANS REPEAT OF A COURSE

() MEANS COURSE CREDIT NOT COUNTED

In accordance with the Family Educational Rights and Privacy Act of 1974, this transcript is released to you for your use on the condition that you will not permit a third party to have access to it without the written consent of the student.

CONFIDENTIAL RECORD
IF YOU HAVE NO FURTHER USE
FOR THIS RECORD PLEASE
DESTROY IT

 Kristin Guerrant, Registrar
Westminster College
REGISTRAR

This transcript is official only if it is printed on safety paper, signed by the Registrar, and impressed with the Westminster College seal. See the reverse side for an explanation of credits and grades.


REGISTRAR

ID : 1631380

Name : Andrew Christian Morales

SSN : XXX-XX-4703

Address : 1410 E 43rd Ct

Tulsa, OK 74105

Westminster College

501 Westminster Avenue

Fulton, MO 65251-1299

7/1/2022 02:46:16 pm

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra	Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2017-2018 : Spring Semester									
PHL-218-O	Introduction to Logic	LT	C		3.00	3.00	3.00	6.00	
Term Totals :					14.00	14.00	14.00	41.80	2.9900
Career Totals :					119.00	115.00	97.00	367.90	3.7900

2018-2019 : Fall Semester									
BIO-330-A	Virology WIO	LT	C		3.00	3.00	3.00	6.00	
BIO-398-A	Histology & Histopathology	LT	WF		3.00	0.00	0.00	0.00	
PHL-324-A	Ethics of Genetic Manipulati	LT	B		3.00	3.00	3.00	9.00	
PHL-333-A	Asian Philosophy/Religion	LT	A-		3.00	3.00	3.00	11.10	
Term Totals :					12.00	9.00	9.00	26.10	2.9000
Career Totals :					131.00	124.00	106.00	394.00	3.7200

2018-2019 : Winter Term									
EDU-230-O	Child & Adolescent Growth i	LT	D		3.00	3.00	3.00	3.00	
EDU-385-O	Diversity in Education	LT	C-		3.00	3.00	3.00	5.10	
Term Totals :					6.00	6.00	6.00	8.10	1.3500
Career Totals :					137.00	130.00	112.00	402.10	3.5900

2018-2019 : Spring Semester									
BIO-301-A	Genetics	LT	W		4.00	0.00	0.00	0.00	
ENG-206-O -I	British Lit since 1800 (WI)	LT	W		3.00	0.00	0.00	0.00	
PED-A15-A	Yoga	PF	W		1.00	0.00	0.00	0.00	
PHL-320-A	Philosophy and Literature (V	LT	W		3.00	0.00	0.00	0.00	

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra	Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2018-2019 : Spring Semester									
PSY-113-B	Psychology as a Social Scie	LT	W		3.00	0.00	0.00	0.00	
Term Totals :					14.00	0.00	0.00	0.00	0.0000
Career Totals :					151.00	130.00	112.00	402.10	3.5900

2018-2019 : Summer - Second Session									
ENG-275-O -I	Intro to Creative Writing (WI	LT	A		3.00	3.00	3.00	12.00	
PED-A99-A	P.E. Activity Elective	PF	CR		1.00	1.00	0.00	0.00	
Term Totals :					4.00	4.00	3.00	12.00	4.0000
Career Totals :					155.00	134.00	115.00	414.10	3.6000

2019-2020 : Fall Semester									
PSY-113-O	Psych as a Social	LT	A		3.00	3.00	3.00	12.00	
Term Totals :					3.00	3.00	3.00	12.00	4.0000
Career Totals :					158.00	137.00	118.00	426.10	3.6100

2019-2020 : Fall Transfer									
Organization : TRANSFERORGANIZATION									
PHL-299	Philosophy Elective	TR	TR		3.00	3.00	0.00	0.00	
PHL-499	U.L. Philosophy Elective	TR	TR		3.00	3.00	0.00	0.00	
Term Totals :					6.00	0.00	0.00	0.00	0.0000
Career Totals :					164.00	143.00	118.00	426.10	3.6100

University of Tulsa - Tulsa, OK

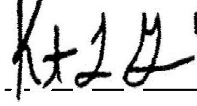
Page : 3 of 4

* MEANS REPEAT OF A COURSE

() MEANS COURSE CREDIT NOT COUNTED

In accordance with the Family Educational Rights and Privacy Act of 1974, this transcript is released to you for your use on the condition that you will not permit a third party to have access to it without the written consent of the student.

CONFIDENTIAL RECORD
IF YOU HAVE NO FURTHER USE
FOR THIS RECORD PLEASE
DESTROY IT

 Kristin Guerrant, Registrar
Westminster College
REGISTRAR

This transcript is official only if it is printed on safety paper, signed by the Registrar, and impressed with the Westminster College seal. See the reverse side for an explanation of credits and grades.


REGISTRAR

ID : 1631380

Name : Andrew Christian Morales

SSN : XXX-XX-4703

Address : 1410 E 43rd Ct

Tulsa, OK 74105

Westminster College

501 Westminster Avenue

Fulton, MO 65251-1299

7/1/2022 02:46:16 pm

Undergraduate Division

Advisors : Dawn Kimberly Holliday , Ph.D.

Dr. Richard C Geenen

Course Number	Title	CR Type	Gra Rpt	Att	Ernd	HGpa	Q.Pts	GPA
2019-2020 : Spring Transfer								

Organization : TRANSFERORGANIZATION

AEX-LIT	Artistic Express-Literature	TR	TR	3.00	3.00	0.00	0.00	
BIO-299	Lower Level Elective	TR	TR	4.00	4.00	0.00	0.00	
Term Totals :				7.00	0.00	0.00	0.00	0.0000
Career Totals :				171.00	150.00	118.00	426.10	3.6100

University of Tulsa - Tulsa, OK

2019-2020 : Spring Transfer								
------------------------------------	--	--	--	--	--	--	--	--

Organization : TRANSFERORGANIZATION

SPA-101	Elementary Spanish I	TR	TR	4.00	4.00	0.00	0.00	
Term Totals :				4.00	0.00	0.00	0.00	0.0000
Career Totals :				175.00	154.00	118.00	426.10	3.6100

Maricopa Community Colleges - Tempe, AZ

Degree Information :

(1) 'Bachelor of Arts' Date Conferred : 5/9/2020

Major(s)

Biochemistry Major

Philosophy Major

Concentration(s)

Biological

Page : 4 of 4

* MEANS REPEAT OF A COURSE

() MEANS COURSE CREDIT NOT COUNTED

In accordance with the Family Educational Rights and Privacy Act of 1974, this transcript is released to you for your use on the condition that you will not permit a third party to have access to it without the written consent of the student.

CONFIDENTIAL RECORD
IF YOU HAVE NO FURTHER USE
FOR THIS RECORD PLEASE
DESTROY IT.

Kristin Guerrant
 Kristin Guerrant, Registrar
 Westminster College
 REGISTRAR

This transcript is official only if it is printed on safety paper, signed by the Registrar, and impressed with the Westminster College seal. See the reverse side for an explanation of credits and grades.

Ivan E. Davila
 REGISTRAR

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 20, 2023

The Honorable James Browning
Pete V. Domenici United States Courthouse
333 Lomas Boulevard, N.W., Room 660
Albuquerque, NM 87102

Dear Judge Browning:

I am on the faculty at Washington and Lee University School of Law, and am writing to you in very enthusiastic support of Andrew C. Morales, a rising third year law student at W&L who is seeking a clerkship with your court.

Mr. Morales was enrolled in my Fall 2022 Evidence class. In a course that was full of remarkable students, Mr. Morales was the very top performing student on both his final exam and his other required written work (two motions in limine), by a quite significant margin. Moreover, my Evidence class had only 43 students, so over the course of our term together I was able to get to know Mr. Morales rather well. As I explain more fully below, based on my experience with Mr. Morales in class and outside of class, I am confident that he will be an asset to any court that has the pleasure of working with him in its chambers.

I teach my Evidence course with an experiential bent. To that end, in addition to requiring extensive case readings, deep engagement with the rules, and a cumulative multiple-choice final exam, I employ a problem-based approach that demands significant in-class discussion. I also require the students to draft and argue two complex motions in limine involving issues arising under Federal Rules of Evidence 401-404 and 702-703. As a consequence, I am able to develop deeper insights into my Evidence students' strengths and weaknesses than is perhaps typical of a traditional law school classroom.

Over the course of the term, I discovered that, while Mr. Morales has a warm, steady, low-key demeanor, he is absolutely not a wallflower. He was an active and incisive participant in what was a very smart and lively class overall. His in-class work and our out-of-class discussions demonstrated that he is an inquisitive, thorough, creative thinker, and that he is a close reader with very strong analytical skills. Mr. Morales also performed extremely well in his motion in limine oral arguments. He has excellent communication skills, and during his oral arguments he was poised, self-assured, clear and creative. He also did an excellent job engaging with me (as the court) when I pressed him with difficult questions.

Mr. Morales's written work on his two motions in limine was also superb – the strongest in the entire class. Both of his motions made excellent use of the applicable authority, and both were cogent, creative, well-organized, well-argued, and thorough without sacrificing conciseness. Based on my experience with his work, I am confident that Mr. Morales's writing and analytical skills would serve you well in your chambers.

I am also confident that you will find Mr. Morales to be a wonderful colleague. He is truly a delight to be around – he is kind-hearted, collaborative, bright and hard-working. He was a pleasure to teach and work with, and I am confident that he will bring much to your chambers.

I would welcome the opportunity to talk with you regarding Mr. Morales, and I encourage you to contact me with any questions you may have.

Very truly yours,

C. Elizabeth Belmont
Clinical Professor of Law

Elizabeth Belmont - belmontb@wlu.edu



WASHINGTON AND LEE
UNIVERSITY
SCHOOL OF LAW

TODD C. PEPPERS
VISITING PROFESSOR OF LAW

Telephone: (540) 458-8522
Facsimile: (540) 458-8488
E-mail: pepperst@wlu.edu

June 10, 2023

To Whom It May Concern:

I am writing this letter in support of Andrew Morales' clerkship application. For the reasons listed below, I think that Andrew would be a wonderful addition to your chambers. I recommend his application to you enthusiastically and without reservation.

Before I address Andrew's skill set, I want to briefly talk about my insights into legal clerkships. I had the great good fortune to clerk after law school – first for a federal district court judge and then a federal magistrate court judge. The clerkship experience so interested me that I subsequently wrote my graduate school dissertation on the subject. And since taking a teaching position in 2002, I have written, co-written, edited and/or co-edited four books and approximately twenty articles on law clerks. This includes two articles which surveyed federal appeals court and district court judges on their law clerk hiring and utilization practices.

The end result of this research is that I have a fairly accurate idea of what judges generally want in a law clerk as well as the skills needed to be a successful clerk. Of course, at a minimum, judges want to hire bright young people who have succeeded in law school. Candidates with a strong work ethic, maturity and solid research/writing skills are preferred. And, of course, "chamber fit" is important. Andrew checks off all these boxes.

Last semester, I had Andrew as a student in my Civil Litigation Practicum. The course is a semester-long simulation of a toxic tort case, in which students are divided into teams of attorneys to represent the different parties in the litigation. The students draft discovery requests, take depositions, and argue summary judgment motions. The simulation is based on a case that I once litigated, and it's a fairly complex and accurate representation of a wrongful death action (asbestos) combined with a loss of consortium claim.

Andrew was assigned to represent an insulation contractor and supplier. The simulation introduced a "wrinkle" into defending his client because our hypothetical state has a statute of repose defense in addition to the traditional issues/defenses in a negligent design/failure to warn case. I've been teaching this simulation for the last decade, and Andrew – *hands down* – did the best job of any student assigned to represent this specific defendant. This was especially true when it came to developing the statute of response defense, which students often struggle to even understand. And the summary judgment brief that he drafted was on par with the work product of a second or third year associate.

In light of Andrew's hard work, in May I asked him to work as my research assistant. I am in the early stages of working on a biography of Chief Justice Warren Burger, which includes doing archival work in the Burger archives at William and Mary. This summer, Andrew is doing remote research for me while he works in Atlanta. My plan is to have him help me dig through the extensive archives when he returns to Virginia this fall. This is important and complicated research, and the fact that I've asked Andrew to be my assistant is evidence of my high regard for his intellect and work ethic.

Finally, there is chamber fit. I think the world of Andrew. He is a friendly, personable, and articulate young man with a perpetual twinkle in his eye. While Andrew takes his studies seriously, he doesn't take *himself* too seriously (a common vice of law students) and has a good sense of humor. He will mesh easily with your existing chamber staff and become a great addition to your "family" of law clerks.

Justice Felix Frankfurter had an expression that he used when speaking of his best law clerks. "I bet on him," Frankfurter would say. Well, I bet on Andrew. And your bet on Andrew will pay dividends.

Please let me know if there is any additional information that I can provide. I can be reached at pepperst@wlu.edu or at (540) 761-3988.

Most sincerely yours,

A handwritten signature in black ink, appearing to read "Todd C. Peppers". The signature is fluid and cursive, with a large initial "T" and "P".

Todd C. Peppers

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 20, 2023

The Honorable James Browning
Pete V. Domenici United States Courthouse
333 Lomas Boulevard, N.W., Room 660
Albuquerque, NM 87102

Dear Judge Browning:

I have known Andrew since his 1L year of Law School. He was a member of my Constitutional Law course, as well as two other courses including a small seminar course. I know Andrew well, having worked with him in multiple contexts during his time at law school. I have observed his constant quest for knowledge and dedication to his work and I am delighted to recommend him for a clerkship.

I have taught Andrew in very different courses: the first year constitutional law course, a very statutory-focused environmental law course, and a seminar called Law and Geography, which I consider to be essentially a super advanced writing course. Each of these courses presents different challenges to a law student from comprehending complex theories of governance to parsing statutes to writing a Supreme Court amicus brief. Andrew performed very well in each of those contexts. In the context of peer critiques, he was both honest and kind. He had the patience and curiosity to really engage with the coursework. He showed both fascination with and commitment to developing good arguments and mastering advanced legal writing skills.

More personally, Andrew is engaging, mature and very professional. He is enthusiastic about the study and practice of law and soaks up every opportunity provided to him. He presents himself in a measured, thoughtful way when speaking and unsurprisingly given that, he is meticulous in his writing. I believe that he would greatly value a clerkship experience and that he would thrive in that type of environment. Most importantly for the work of the court, given Andrew's abilities and his work ethic, I know that he would be a valuable contributor to chambers.

Best Regards,

Jill M. Fraley
Professor of Law

Jill Fraley - fraleyj@wlu.edu

WRITING SAMPLE

Andrew C. Morales
309 S. Main St., Apartment #9
Lexington, VA 24450
Morales.a24@law.wlu.edu
(918)-625-7069

During a Civil Litigation Practicum that I enrolled in for the Spring 2023 semester, I prepared the attached brief in support of Defendant AC&S, Inc.'s motion for summary judgment. The practicum consisted of a simulated asbestos lawsuit, which was based on a real case that Professor Todd C. Peppers litigated during his tenure with an Atlanta law firm in 2001-2002. Each party to the simulation had a document repository to simulate discovery, and depositions of fake witnesses were taken with a court reporter at the law school. After developing an evidentiary record, the practicum culminated in a summary judgment hearing, as to which the attached brief was submitted for. You will notice that we were instructed to make *in limine* arguments in the footnotes as opposed to writing a separate motion.

IN THE CIRCUIT COURT
FOR THE SOUTHERN DISTRICT OF BLACKACRE

DAVID COSTELOE, Individually and as)	
Personal Representative of the Heirs and)	
Estate of NANCY W. COSTELOE,)	
Deceased,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 08CV1765
)	
AC&S, INC.,)	
JOHNS-MANVILLE, INC.,)	
NATIONAL GYPSUM,)	
PITTSBURGH-CORNING, INC.,)	
TIGHT FIT GASKETS & PACKING, AND)	
UNITED STATES GYPSUM,)	
)	
Defendants.)	

**DEFENDANT AC&S, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant AC&S, Inc. [hereinafter “AC&S”] and files this Memorandum of Law in Support of its Motion for Summary Judgment as to Plaintiff David Costeloe [hereinafter “Plaintiff”], Individually and as Personal Representative of the Heirs and Estate of Nancy W. Costeloe [hereinafter “Nancy”], Deceased, by showing the Court as follows:

I. INTRODUCTION

Nancy was born in 1954 and lived with her family in a series of Chattanooga, Blackacre homes until 1972. Between 1954 and 1972, Plaintiff alleges that Nancy’s father, Bill Webbe, worked with or around asbestos-containing products while he was employed at DuPont-Chattanooga as well as during the several occasions that he built homes on the side. Plaintiff further alleges that Nancy was exposed to asbestos by and through her father, either as a result of exposure

to dust from doing the family's laundry and/or from Nancy's presence at his home construction sites, resulting in damages to Nancy. Plaintiff claims he is entitled to damages for loss of consortium as a result of Nancy's asbestos-related death.

As a point of reference, AC&S is an insulation company that installed and, to a lesser extent, supplied insulation materials. Plaintiff's theory of liability against AC&S sounds in negligent failure to warn.

Based on the material facts before the Court, as to which AC&S contends no genuine issue exists, Plaintiff's allegations against AC&S fail for the following reasons:

- (1) There is no record evidence that Plaintiff's decedent, Nancy Costeloe, was exposed to products distributed or installed by AC&S. Even if she was somehow exposed, Plaintiff cannot show it was with sufficient frequency and regularity necessary to hold AC&S liable.
- (2) In the first alternative, there is no record evidence that AC&S was negligent. In other words, Plaintiff cannot show that AC&S knew or should have known about the dangers of asbestos.
- (3) In the second alternative, AC&S is entitled to partial summary judgment for its role in installing insulation at the DuPont-Chattanooga facility. AC&S's installation of insulation at DuPont-Chattanooga constituted an improvement to realty under the Blackacre statute of repose as to which no reasonable jury could disagree.

II. STATEMENT OF MATERIAL FACTS

AC&S submits the following concise written statement of material facts, as to which it contends no genuine issue exists, in support of its entitlement to judgment as a matter of law. *See* Bl. R. Civ. P. 56.

A. Deposition of Nancy W. Costeloe

The discovery deposition of Plaintiff's decedent, Nancy W. Costeloe, was taken on July 17, 2001 in Chattanooga, Blackacre. Nancy was born in February of 1954 in Chattanooga, Blackacre, where she lived with her family until graduating from high school in 1972. (Deposition of Nancy Costeloe, July 17, 2001, p. 10/7-12). Her father, Bill Webbe, worked at the DuPont plant in Chattanooga, starting sometime in the 1940's and retiring in the 1980's. (*Id.* at p. 8/1-5). Her father also started building homes in the summer of 1966 when Nancy was entering seventh grade. (*Id.* at pp. 9/27-10/5, 10/14-17). He built three homes for the family during the time period between 1966 and 1971. (*Id.* at p. 11/7-12).

Nancy was carefully cross-examined about her possible exposure to asbestos. Her household chores growing up included doing laundry. (*Id.* at p. 12/22-24). She became primarily responsible for the household laundry around 1966 when she was in seventh grade. (*Id.* at pp. 12/26-27, 14/2). This laundry included her father's work clothes, which she says were often covered with a white or creamy dust; she typically had to shake the dust off the clothes before putting them in the wash. (*Id.* at p. 13/1-10). In addition, Nancy would sometimes pick her father up from work at DuPont with her family, though she never visited her father while at work. (*Id.* at p. 9/13-15, 9/5-6). She did, however, spend time at the three family home construction sites. (*Id.* at p. 12/3-6). This testimony highlights Nancy's only possible sources of asbestos exposure in the record. Nancy was unable to identify any asbestos-containing products that her father may have worked around.

B. Deposition of Plaintiff David Costeloe

The deposition of David Costeloe was taken on October 14, 2001 in Chattanooga, Blackacre. This testimony is not relevant to the issues before the Court at summary judgment.

C. Deposition of William Earl Webbe, Jr. (“Bill Webbe”)

The deposition of Bill Webbe was taken on January 18, 1998 in Chattanooga, Blackacre in his own asbestos-related lawsuit. For the relevant time period in this litigation, Mr. Webbe worked as an insulator at DuPont-Chattanooga from 1954-1957 and as an insulation supervisor at DuPont-Chattanooga from 1958-1972. (Deposition of Bill Webbe, January 18, 1998, p. 11/4-17). DuPont’s internal insulators were only responsible for small repair and insulation jobs, while outside insulation contractors performed major construction jobs; DuPont’s internal insulators did not work with the outside insulation contractors. (*Id.* at pp. 11/26-12/2). Mr. Webbe never installed insulation materials as an insulation supervisor, though he might have been near people that did. (*Id.* at p. 11/20-24).

DuPont-Chattanooga hired AC&S for an insulation contracting job sometime in the early or mid-1960’s. (*Id.* at p. 12/4-8). Mr. Webbe remembers seeing AC&S’s workers come to work, but he didn’t work with them; on a few occasions, though, he checked out what they were doing. (*Id.* at p. 12/14-18). After AC&S finished their work, the DuPont insulators had to go in to clean it up and remove a lot of it. (*Id.* at p. 12/19-22). Notably, Mr. Webbe only saw AC&S’s workers installing foam glass and rubber installation—neither of which contain asbestos. (*Id.* at p. 12/24-29). He saw boxes of Johns-Manville Thermobestos insulation in AC&S’s storeroom, but he doesn’t know if Thermobestos was used.¹ (*Id.* at p. 12/29-31). Mr. Webbe says AC&S was replaced by another insulation contracting company after this job. (*Id.* at p. 12/9-12).

A lot of the insulation material DuPont-Chattanooga used didn’t have asbestos in it, including foam glass, Fiberglass, cork, rubber, and mineral wool. (*Id.* at p. 15/9-14). Importantly,

¹ Plaintiff may argue that there is a genuine issue of material fact as to whether Thermobestos was used because Bill goes on to say that Thermobestos must have been used if boxes were present. (*Id.* at p. 12/29-13/1). However, this latter testimony is speculation that would be inadmissible at trial and should not be considered at summary judgment because Bill lacks personal knowledge by his own admission. *See* Bl. R. Evid. 602.

AC&S was also in the business of supplying and installing these non-asbestos containing insulation products.

D. Deposition of Pete Smith

The deposition of Pete Smith was taken on March 17, 2002 in Lexington, Blackacre. Mr. Smith installed insulation as an insulator's helper at DuPont-Chattanooga from 1965-1970. (Deposition of Pete Smith, March 17, 2002, pp. 7/21-8/11). Mr. Smith described Mr. Webbe as a walking boss in his role as insulation supervisor, in that he would walk around and make sure the insulators were doing their job. (*Id.* at pp. 8/21-9/11).

Mr. Smith was carefully cross-examined about DuPont-Chattanooga's contractors and suppliers of insulation products. Mr. Smith could not speak to DuPont-Chattanooga's suppliers of insulation, but he saw AC&S's boxes present even when AC&S wasn't doing installation work; however, he never saw the materials inside AC&S's boxes nor whether the materials in the boxes were installed. (*Id.* at pp. 41/17-42/4). He also saw boxes of Kaylo, Johns-Manville Thermobestos, and Pittsburgh-Corning Unibestos, the insulation products usually used by DuPont-Chattanooga, but he doesn't know who supplied those. (*Id.* at pp. 42/5-14, 33/18-23). He doesn't know if AC&S supplied non-asbestos containing insulation to DuPont-Chattanooga. (*Id.* at pp. 42/22-43/4).

Mr. Smith recalls that AC&S was contracted for installing insulation at DuPont-Chattanooga on one occasion, sometime between 1965 and 1970. (*Id.* at pp. 38/8-13, 121/2-8). He saw them hanging insulation, and the job went on for less than a year. (*Id.* at pp. 37/17-24, 87/20-22). The contracting job was for an addition to the facility on another side of the plant from where Mr. Smith generally worked. (*Id.* at pp. 37/17-38/2, 87/1-5). He saw Mr. Webbe overseeing AC&S's work on this addition to the facility.² (*Id.* at p. 87/7-12). He says Mr. Webbe would go

² AC&S timely objected to the form of this question because it lacked proper foundation. The immediately preceding testimony indicates that Mr. Smith worked on a different side of the facility from AC&S's workers.

over there every day to check on their work.³ (*Id.* at pp. 87/14-19). On one occasion, three to six months after its original installation, Mr. Smith and the other insulators had to remove and replace part of the insulation that AC&S installed. (*Id.* at pp. 122/10-15, 124/23-125/8). The products they had to remove were the same types of insulation products normally used by DuPont, but there was more Unibestos present than where Mr. Smith usually worked. (*Id.* at pp. 127/22-128/12).

Mr. Smith was carefully cross-examined about his role in the home construction sites. Mr. Smith hung sheetrock and drywall at two houses that Mr. Webbe was building, one in 1967 and one in 1969. (*Id.* at pp. 12/15-24, 20/8-19). Mr. Smith never saw any of AC&S's workers at the home construction sites, and he never saw AC&S's boxes. (*Id.* at p. 43/10-17). The joint compound, sheetrock, and shingles are the only products at the home construction sites that he knew contained asbestos. (*Id.* at pp. 43/18-44/5). Notably, AC&S was not in the business of supplying or installing any of these products.

Mr. Smith was carefully cross-examined about whether he knew about the dangers of asbestos. DuPont-Chattanooga never provided any safety instructions for using asbestos products other than general safety warnings. (*Id.* at pp. 10/24-11/9). He also never saw any warning signs relating to the dangers of asbestos. (*Id.* at p. 72/9-12). Mr. Webbe never informed Mr. Smith about the inherent risks of asbestos. (*Id.* at p. 12/10-14). There were, however, rumors in the parking lot, where co-workers were talking about asbestos possibly being bad for them; nevertheless, Mr. Smith called this "pure speculation." (*Id.* at p. 139/12-23).

Without testimony that Mr. Smith had the capacity to see AC&S's workers from the other side of the factory, this testimony is insufficient to show that Mr. Smith had personal knowledge as required under Bl. R. Evid. 602, and, therefore, it should not be considered.

³ AC&S urges the Court to apply the same form objection to this testimony because it is a follow up question to the original question that was timely objected to, and, likewise, lacks the requisite foundation. *See* Bl. R. Evid. 602.

Mr. Smith was carefully cross-examined about his knowledge of the functions and uses of asbestos-containing insulation products. It was the standard of the industry to use asbestos-containing insulation.⁴ (*Id.* at p. 39/3-17). People buy insulation with the hope that it will be a permanent and fixed installation.⁵ (*Id.* at p. 38/14-24). While describing the general function of an insulator's job, Mr. Smith says "the idea is to get [insulation] sealed to the point where the insulation prevents the loss of heat and energy." (*Id.* at p. 124/18-21). Based on Mr. Smith's experience and observation and what he learned through training, experience, and observation, he opined that "[asbestos-containing insulation] was used because it was found to be effective, and it was probably easier maybe to use than some other type of insulation."⁶ (*Id.* at p. 39/3-14). He agrees it was the industry standard because it was "the best."⁷ (*Id.* at pp. 39/22-40/6). He also agrees that the insulation at DuPont-Chattanooga became a part of the factory after it was installed.⁸ (*Id.* at pp. 44/20-45/1).

E. Deposition of Sally Webbe

The deposition of Sally Webbe was taken on March 27, 2002 in Lexington, Blackacre. This testimony is not relevant to the issues before the Court at summary judgment.

⁴ Plaintiff objected to the question as calling for speculation. This objection should be overruled because Pete answered the question based on his "experience and observation and what [he] learned through training, experience, and observation." (*Id.* at 39/3-17). *See* Bl. R. Evid. 602.

⁵ Plaintiff objected to the question as asking for a legal conclusion. (*Id.* at p. 38/14-18). This objection should be overruled because Pete's experience and observation as an insulator's helper and what he learned through training, experience, and observation as an insulator's helper qualifies him to opine on whether insulation was meant to be permanent. *See* Bl. R. Evid. 602.

⁶ Plaintiff's objection should be overruled for the reasons stated in footnote 4. This is the same objection discussed *supra* at footnote 4. (*Id.* at 39/3-14).

⁷ Plaintiff's objection should be overruled because Plaintiff failed to state an objection with reasonably particularity. Saying "objection," without more, is not enough to preserve an objection on the record. (*Id.* at p. 39/22-24).

⁸ Plaintiff's objection should be overruled because Plaintiff failed to state an objection with reasonably particularity. Saying "objection," without more, is not enough to preserve an objection on the record. (*Id.* at p. 44/20-22).

F. Miscellaneous Documents

AC&S produced four letters in response to Plaintiff's discovery requests.⁹ The letters provide evidence of AC&S's very limited involvement in installing and supplying asbestos-containing insulation products at DuPont-Chattanooga. The first letter is dated August 21, 1956, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Douglas Allan, Vice President of Material Procurement at DuPont-Chattanooga. This letter describes DuPont-Chattanooga's plan to hire AC&S's insulators to install Johns-Manville Thermobestos in their Number One Boiler Room. *See* Exhibit A.

The second letter is dated September 24, 1956, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Douglas Allan, Vice President of Material Procurement at DuPont-Chattanooga. This letter confirms that AC&S had completed insulating the steam pipes and related equipment in the Number One Boiler Room as referenced by Exhibit A. *See* Exhibit B.

The third letter is dated June 22, 1968, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Bill Webbe, Insulation Supervisor at DuPont-Chattanooga. This letter indicates that AC&S sent DuPont-Chattanooga a shipment of Johns-Manville Thermobestos after Bill Webbe reached out to AC&S about a lost shipment of Kaylo. Notably, the language about a lost shipment of Kaylo does not permit the inference that AC&S ever supplied Kaylo before this lost shipment. *See* Exhibit C.

The fourth letter is dated February 12, 1973, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Bill Webbe, Insulation Supervisor at DuPont-Chattanooga. The letter states: "I cannot comply with your request for another 24 boxes of Pittsburgh Corning Unibestos." It goes

⁹ AC&S assumes that Plaintiff will rely on these letters at summary judgment, and, in that case, we do not contest that these letters are admissible as opposing party statements. *See* Bl. R. Evid. 801. If Plaintiff does not so rely, however, we move the court to strike these letters from the record as inadmissible hearsay. *Id.*

on to say that asbestos-containing products are no longer available, but that there is now an asbestos-free alternative available. Notably, AC&S concedes that the language “*another 24 boxes of... Unibestos*” supports the inference of at least one previous shipment of Unibestos; however, inferring that there was more than one previous shipment from this letter would amount to pure speculation. *See* Exhibit D.

Aside from what Plaintiff received in discovery, we submit the following two letters as evidence that AC&S was in the business of supplying and/or installing non-asbestos-containing insulation, and that AC&S could have supplied and/or installed non-asbestos-containing insulation at the DuPont-Chattanooga facility. The first letter is dated April 1, 1961, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Roger P. Cleary, Esq. at Cleary & Cleary. The letter indicates that AC&S “told DuPont repeatedly that cork insulation would provide superior insulation, and [AC&S] can’t afford to replace that fiber glass insulation and eat the cost.” *See* Exhibit E. Notably, neither cork nor fiber glass insulation products contain asbestos.

The second letter is dated March 23, 1966, and was sent from Robert Armstrong, Jr., CEO of AC&S, to Mr. John Williams, Insulation Supervisor at Reynold Metals in Tuscumbia, AL. The letter indicates that AC&S “distribute[s] a wide-range of insulation products, from asbestos-containing pipe and block insulation for high-heat application to cork, rubber, mineral wool, fiber glass, and foam glass insulation.” *See* Exhibit F. Notably, cork, rubber, mineral wool, fiber glass, and foam glass insulation do not contain asbestos. AC&S submits these letters for the circumstantial, non-hearsay purpose of showing that AC&S was in the business of supplying and installing non-asbestos containing insulation at factories such as DuPont-Chattanooga, not for the truth of the matter asserted in the letters. *See* Bl. R. Evid. 801.

III. ARGUMENT AND CITATION OF AUTHORITIES¹⁰

A. Defendant's Burden On Summary Judgment

Upon motion for summary judgment, the Court must view the facts—and the inferences to be drawn from those facts—in the light most favorable to the party opposing the motion. *Ross v. Communications Satellite Corp.*, 759 F.2d 355 (4th Cir. 1985). Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Federal Rule of Civil Procedure 56(c) mandates entry of summary judgment against a party who “after adequate time for discovery and upon motion...fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex v. Catrett*, 477 U.S. 317, 322 (1986). The moving party, however, is not entitled to summary judgment if the parties’ dispute over a material fact is genuine. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). A genuine issue of material fact exists if a reasonable jury could return a verdict for the non-moving party. *Id.*

B. The Plaintiff Has Failed To Meet The Threshold Burden Of Demonstrating Exposure To AC&S’s Product As Required Under Blackacre Law.

Under Blackacre law, the controlling case setting the standard for product identification in asbestos cases is *Blackston v. Johns-Manville Co.*, 764 F.2d 1480, 1485 (4th Cir. 1985). Under *Blackston*, there exists no presumption that a plaintiff was exposed to a defendant's asbestos-containing product simply by virtue of working at a job site at a time when a defendant's asbestos-containing product was in use. *Blackston v. Johns-Manville Co.*, 764 F.2d 1480, 1485 (4th Cir. 1985). To survive summary judgment, a plaintiff must affirmatively show that a particular defendant's product caused injury to him. *Blackston v. Johns-Manville*, 764 F.2d 1480, 1485 (4th

¹⁰ AC&S assumes *arguendo* that the *in limine* arguments raised by AC&S to exclude evidence are resolved in favor of Plaintiff for the purposes of this brief. AC&S does not waive objections and arguments raised herein.

Cir. 1985). Without such showing, summary judgment must be entered in favor of a defendant. *Blackston v. Johns-Manville Co.*, 764 F.2d 1480 (11th Cir. 1985); *Odum v. Celotex Corp.*, 764 F.2d 1486 (4th Cir. 1985); *Lee v. Celotex Corp.*, 764 F.2d 1489 (4th Cir. 1985).

i. AC&S's Role as a Supplier

In the instant case, there is no evidence that AC&S supplied asbestos-containing products to Mr. Webbes's home construction sites. Indeed, Mr. Smith testified that he never saw AC&S boxes at the home construction sites, and the asbestos-containing products he remembers seeing at the home construction sites are products that AC&S was not in the business of supplying. (Deposition of Pete Smith, March 17, 2002, pp. 43/10-44/5). Nancy's theory of exposure to asbestos-containing products supplied by AC&S therefore rests on the assumption that Mr. Webbe was exposed to asbestos-containing products that AC&S supplied to the DuPont-Chattanooga facility, and that Mr. Webbe's exposure at DuPont-Chattanooga subsequently led to Nancy's exposure through the same asbestos-containing dust on Mr. Webbe's work clothes.

The record shows that AC&S boxes were present at the DuPont-Chattanooga facility sometime between 1965 and 1970. (*Id.* at pp. 41/17-42/4). Mr. Smith asserts that the boxes contained insulation, but the record is silent as to whether the boxes contained non-asbestos-containing insulation or asbestos-containing insulation. *Id.* Moreover, the record does not indicate whether Mr. Smith ever saw the boxes opened, nor whether he ever saw products taken out of the boxes. Lastly, there is no testimony that places Mr. Webbe in proximity to products removed from the AC&S boxes. Based on these facts, Plaintiff cannot affirmatively show that Mr. Webbe was exposed to products that AC&S supplied. Even if Plaintiff could affirmatively show that Mr. Webbe was exposed to products taken from these AC&S boxes, Plaintiff cannot affirmatively show that the boxes contained asbestos-containing products.

Indeed, the record shows that AC&S was in the business of supplying and installing non-asbestos-containing insulation products at facilities such as DuPont, *see* Exhibit E; Exhibit F, and Mr. Webbe admitted that DuPont-Chattanooga regularly used non-asbestos containing products. (Deposition of Bill Webbe, January 18, 1998, p. 15/9-14). While there is evidence that AC&S supplied DuPont with a shipment of Thermobestos in 1968 and a shipment of Unibestos sometime before February 12, 1973, this falls short of affirmative evidence. *See* Exhibit C; Exhibit D. Blackacre law requires the Plaintiff to produce affirmative evidence of exposure to asbestos-containing products to survive summary judgment. *Blackston v. Johns-Manville*, 764 F.2d 1480, 1485 (11th Cir. 1985). Mr. Smith did not testify that he saw Thermobestos or Unibestos products in the AC&S boxes, nor that he saw Mr. Webbe working with or around Thermobestos or Unibestos removed from the AC&S boxes. The Thermobestos and Unibestos that we supplied could have been used at a completely different part of the facility from where Mr. Webbe was working, or they might not have been used at all.

ii. AC&S's Role as a Contractor

There is no evidence that AC&S was ever contracted to install asbestos-containing products at Mr. Webbe's home construction sites. Indeed, Mr. Smith testified that he never saw AC&S workers at the home construction sites, and the asbestos-containing products he remembers seeing at the home construction sites are products that AC&S was not in the business of installing. (Deposition of Pete Smith, March 17, 2002, pp. 43/10-44/5). Nancy's theory of exposure to asbestos-containing products installed by AC&S therefore requires the assumption that Mr. Webbe was exposed to asbestos-containing products that AC&S installed at the DuPont-Chattanooga facility, and that Mr. Webbe's exposure at DuPont-Chattanooga subsequently led to Nancy's exposure through the same asbestos-containing dust on Mr. Webbe's work clothes.

The record shows that AC&S performed, at the most, three insulation contracting jobs at the DuPont-Chattanooga facility while Mr. Webbe was working at the facility.¹¹ The first was performed sometime between August 21, 1956 and September 24, 1956, where AC&S installed Thermobestos in the Number One Boiler room. *See* Exhibit A; Exhibit B. Mr. Webbe was working as an insulator when this contracting job was performed. (Deposition of Bill Webbe, January 18, 1998, p. 11/4-17). Second, there is evidence that AC&S performed one contracting job in the early to mid-1960's. (*Id.* at p. 12/4-8). Mr. Webbe was working as an insulation supervisor during this job. (*Id.* at p. 11/4-17). Third, there is evidence that AC&S performed one contracting job between 1965 and 1970. (Deposition of Pete Smith, March 17, 2002, pp. 38/8-13, 121/2-8). Mr. Webbe was also working as an insulation supervisor during this job. (Deposition of Bill Webbe, January 18, 1998, p. 11/4-17).

In the first instance, there is no evidence that Mr. Webbe worked in proximity to the insulation job AC&S performed in the Number One Boiler room in 1956. On the contrary, Mr. Webbe testified that DuPont's internal insulators did not work with the external insulators when DuPont hired outside insulation contractors, and Mr. Webbe was in fact working as one of DuPont's internal insulators during this contracting job. (*Id.* at pp. 11/26-12/2, 11/4-17). Further, Nancy was not doing the family laundry at this time, which Plaintiff contends was her primary source of exposure to asbestos-containing dust from DuPont-Chattanooga. (Deposition of Nancy Costeloe, July 17, 2001, pp. 12/26-27, 14/2).

Second, there is no affirmative evidence that Mr. Webbe worked in proximity to asbestos-containing products during the contracting job AC&S performed in the early to mid-1960's. While

¹¹ The record is ambiguous as to whether the contracting jobs AC&S performed as identified by the deposition of Mr. Webbe and Mr. Smith were two separate occasions or the same occasion. However, in the light most favorable to Plaintiff, AC&S assumes *arguendo* that the jobs were performed on two separate occasions.

Mr. Webbe acknowledges that he sometimes checked on their work, he only saw AC&S using non-asbestos-containing insulation products such as foam glass and rubber. (*Id.* at 12/14-18, 12/24-29). He saw boxes of Johns-Manville Thermobestos in AC&S's storeroom, but he doesn't know if it was used. (*Id.* at p. 12/29-31). Once again, evidence of boxes being present, without more, falls short of affirmative evidence under Blackacre law. Mr. Webbe testified that he and the other insulators had to replace the materials that AC&S installed, yet he doesn't recall if Thermobestos was used despite having to remove the materials. (*Id.* at p. 12/19-22, 12/29-31). Furthermore, the record is vague as to when this installation job occurred, but if it occurred before 1966, then Nancy was not doing the family laundry at this time. (Deposition of Nancy Costeloe, July 17, 2001, pp. 12/26-27, 14/2).

Third, there is no affirmative evidence that Mr. Webbe worked in proximity to asbestos-containing products during the contracting job that AC&S performed between 1965 and 1970. Mr. Smith testified that, every day during this contracting job, Mr. Webbe would go over to the side of the facility that AC&S was working on to check on their work. (Deposition of Pete Smith, March 17, 2002, p. 87/7-12, 87/14-19). However, Mr. Smith worked on a different side of the facility from the AC&S contracting job, so there's no testimony indicating how close Mr. Webbe was to the AC&S workers. (*Id.* at pp. 37/17-38/2, 87/1-5). Mr. Smith also testified that he and the other insulators had to remove the insulation that AC&S installed. (*Id.* at pp. 122/10-15, 124/23-125/8). However, there is no testimony that Mr. Webbe accompanied these insulators when Mr. Smith and the other insulators had to remove the insulation that AC&S installed. Once again, the record is vague as to when this installation job occurred, but if it occurred before 1966, then Nancy was not doing the family laundry at this time. (Deposition of Nancy Costeloe, July 17, 2001, pp. 12/26-27, 14/2).

C. Assuming Proximity is Established, The Plaintiff Offers No Evidence of Frequency or Regularity of Exposure to AC&S's Asbestos-Containing Product.

Even assuming that the Court finds that the Plaintiff offered affirmative evidence that Nancy was somehow exposed to one of AC&S's asbestos-containing products, Plaintiff must prove more than just a mere minimum exposure. Because legal causation requires that a defendant's conduct be a substantial factor in causing harm, the Fourth Circuit Court of Appeals, in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986), established a test to evaluate the sufficiency of the evidence of exposure. *Id.* at 1162 (applying Blackacre substantive law). This test for asbestos cases, the "frequency, regularity, and proximity" test, incorporates Blackston's proximity test, *see supra*, and looks not only to the mere inference of exposure, but to the frequency and regularity of the exposure to ensure that the defendant's conduct was a substantial factor in causing harm, i.e., the legal cause. "In effect, this is a *de minimis* rule because the plaintiff must prove more than just a casual or minimum contact with the product." *Id.*

This test was necessitated by arguments that a jury question is created if the plaintiff only presents evidence that a defendant's asbestos-containing product was at the work site at the same time the plaintiff was at the work site. *Id.* Given the tremendous size of the workplace of a typical asbestos plaintiff (*e.g.*, shipyards, manufacturing plants), and the great number of products used over time in those workplaces, the extent and nature of the exposure has to be evaluated to determine whether it is sufficient to establish proximate causation. *See Id.* Thus, to defeat summary judgment, the plaintiff must offer "evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Id.* at 1162-63.

i. AC&S's Role as a Supplier

Assuming *arguendo* that the Court finds that Plaintiff offered evidence that Mr. Webbe was exposed to asbestos-containing products that AC&S supplied to DuPont-Chattanooga, and that Nancy was subsequently exposed to the same asbestos-containing dust on Mr. Webbe's work clothes, there is no evidence that such exposure was more than *de minimis*. In particular, there is no testimony that Mr. Webbe worked around products removed from the AC&S boxes that Mr. Smith identified as being present at DuPont-Chattanooga sometime between 1965 and 1970. Similarly, even if these boxes contained a shipment of Thermobestos or Unibestos, there is no evidence indicating how frequently or how long Mr. Webbe would have worked around such products.

Plaintiff may urge the Court to make the inference that Mr. Webbe was exposed to these products with sufficient frequency and regularity because Mr. Smith testified that Mr. Webbe moved around the plant to watch the insulators and make sure they were doing their job. (Deposition of Pete Smith, March 17, 2002, pp. 8/21-9/11). However, such an inference strains credulity because this testimony indicates neither how frequently Mr. Webbe would have been exposed to a particular product supplied by AC&S nor how long it would take for DuPont's insulators to install a product that AC&S supplied. On the contrary, Mr. Webbe testified that DuPont's internal insulators only handled small repair and insulation jobs. (Deposition of Bill Webbe, January 18, 1998, pp. 11/26-12/2). Assuming AC&S only supplied one shipment of Thermobestos and one shipment of Unibestos as evidenced by the record, this supports a stronger inference that Mr. Webbe would not have been exposed to a product supplied by AC&S with the requisite frequency and regularity to constitute more than *de minimis* exposure. *See Lohrmann v.*

Pittsburgh Corning Corp., 782 F.2d 1156, 4 (4th Cir. 1986) (even thirty days of exposure, more or less, is insignificant as a causal factor for asbestos-related illness).

It follows that if Mr. Webbe was not exposed to an asbestos-containing product that AC&S supplied to DuPont-Chattanooga with sufficient frequency and regularity to show more than *de minimis* exposure, neither was Nancy.

ii. AC&S's Role as a Contractor

Assuming *arguendo* that the Court finds that Plaintiff offered evidence that Mr. Webbe was exposed to asbestos-containing products that AC&S installed at DuPont-Chattanooga, and that Nancy was subsequently exposed to the same asbestos-containing dust on Mr. Webbe's work clothes, such exposure was *de minimis*.

In the first instance, there is no evidence that Mr. Webbe worked around AC&S's contractors during the contracting job in 1956, let alone with sufficient frequency and regularity. In fact, there is direct evidence that Mr. Webbe did not work with outside insulation contractors. (Deposition of Bill Webbe, January 18, 1998, pp. 11/26-12/2). Even if he did work around AC&S's workers during this contracting job, the record is silent as to the time interval he would have worked on the project and if he worked at said time interval for the entire project.

In the second instance, Mr. Webbe testified that during the contracting job AC&S performed in the early to mid-60's, he only checked on what AC&S's workers were doing on a few occasions, and there is no evidence that the materials that AC&S used contained asbestos (*Id.* at p. 12/14-30). Nevertheless, assuming that the materials did contain asbestos, "a few occasions" is insufficient to show more than *de minimis* exposure. See *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 4 (4th Cir. 1986) (even thirty days of exposure, more or less, is insignificant as a causal factor for asbestos-related illness).

Lastly, Mr. Webbe testified that during the contracting job AC&S performed between 1965 and 1970, he would check on the AC&S workers every day, and the contracting job lasted for less than a year. (Deposition of Pete Smith, March 17, 2002, pp. 87/14-19, 87/20-22). However, the record is silent as to how frequently Mr. Webbe actually worked near the AC&S workers, i.e., if he was close enough to be exposed to dust, since Mr. Smith worked on a different side of the factory and would not be able to see what Mr. Webbe was actually doing. (*Id.* at pp. 37/17-38/2, 87/1-5).

It follows that if Mr. Webbe was not exposed to an asbestos-containing product that AC&S installed at DuPont-Chattanooga with sufficient frequency and regularity to show more than *de minimis* exposure, neither was Nancy.

D. Assuming Proximity, Frequency, and Regularity is Established, The Plaintiff Offers No Evidence of Negligence on the Part of AC&S.

Negligence is the failure of a party to use reasonable care. It is a breach of the duty that we owe to our fellow citizens to behave in a reasonable and safe manner. As explained by the Blackacre Supreme Court, “negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such person would not have done under existing circumstances.” *Smith v. Owens Corning Corp.*, 75 Bl. S. Ct. 1486 (1955). This duty of care applies to manufacturers as well as individuals. In short, Blackacre courts have consistently held that a manufacturing company can be found to be negligent if it knew, or should have known, that the materials used in a product rendered the product dangerous to the health of the user. *Id.* at 1488. In determining if a manufacturer should have known that a product was dangerous, Blackacre courts have considered evidence of what similar manufacturers in the industry knew as well as evidence of warnings or medical studies known to the manufacturer. *Patterson v. Raybestos Manhattan*, 79 Bl. S. Ct. 86 (1975). Given the dearth of case law on the

subject in Blackacre, AC&S assumes Blackacre courts will apply this standard to contractors and suppliers, such as AC&S, in the same way that it has been applied to manufacturers.

In short, there is no evidence that AC&S knew, or should have known, about the dangers associated with asbestos-containing insulation products. Further, there is no evidence in the record that other suppliers and contractors knew about the dangers of asbestos.

Notably, Mr. Smith testified that he never saw warning signs or labels at DuPont-Chattanooga, or on asbestos-containing products, that described the dangers of asbestos. (Deposition of Pete Smith, March 17, 2002, pp. 10/24-11/9, 72/9-12). Thus, there were no signs or labels that would put AC&S on notice of any dangers.

Although Mr. Smith testified that he heard rumors in the parking lot among DuPont's insulators, where they speculated that asbestos might be bad for them, Mr. Smith called this *pure speculation*. (*Id.* at p. 139/12-23). This indicates that the dangers of asbestos were not widely known. Further, Mr. Webbe testified that DuPont's insulators did not work with outside contractors, so any inference that AC&S's workers may have learned of these rumors in the parking lot is also pure speculation. (Deposition of Bill Webbe, January 18, 1998, pp. 11/26-12/2).

E. Assuming Proximity, Frequency, and Regularity is established in addition to Negligence, AC&S is Entitled to Partial Summary Judgment for Its Role as a Contractor Under the Blackacre Construction Statute of Repose.

Blackacre has adopted a statute of repose for improvements made to real property. Under the construction statute of repose, any action based on an act or omission in design, planning, or management of construction, or during construction, is governed by an eight-year repose period.

Bl. Code § 1-3. The statute states, in relevant part:

No action to recover for... bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained as a result of such injury, shall be brought against any

person performing or furnishing the design, planning, surveying, supervision of construction, or construction of such improvement to real property more than eight years after the performance or furnishing of such services and construction.

Id. Blackacre courts have already decided that installing insulation is a protected activity under the construction statute of repose. *Wood v. Eastern Insulation Co.*, 625 Bl. 2d 125 (1999). There, the reviewing court held that courts must determine whether the challenged actions constitute “an improvement to realty.” *Id.* The Court considered this a “common sense” inquiry. *Id.* The factors the *Wood* court applied under this test include: (1) is the improvement permanent in nature; (2) does it add to the value of the realty, for the purposes for which it was intended to be used; and (3) was it intended by the contracting parties that the ‘improvement’ in question be an improvement to real property or did they intend for it to remain personalty. *Id.* In applying this test, the court relied on the intention of the parties. *See id.* (finding that the insulation was *intended by the parties* to be permanent in nature, did add to the value of the realty, and did *intend* for the insulation materials to become part of the real property itself) (emphasis added).

The latest contracting job AC&S performed at DuPont as supported by the record is sometime between 1965 and 1970. Even assuming the job was performed in 1970, this lawsuit was filed thirty-one years later, well beyond the eight-year repose period. Bl. Code § 1-3. Thus, the only question remaining is whether AC&S’s contracting jobs constituted an improvement to realty as described by the *Wood* court. 625 Bl. 2d 125 (1999). Notably, this is a “common sense” factor test, so AC&S does not necessarily have to carry its burden on each individual factor.

As to the first factor, the record is clear that DuPont intended for AC&S’s insulation to be permanent in nature. Mr. Smith testified that people buy insulation with the hope that it will be a permanent and fixed installation. (Deposition of Pete Smith, March 17, 2002, p. 38/14-24). He also agreed that asbestos-containing insulation was the industry standard because it was “the best.”

(*Id.* at pp. 39/22-40/6). It can be strongly inferred that describing asbestos-containing insulation as “the best” suggests conformity with a purchaser’s hope that the insulation will be a permanent and fixed installation.

As to the second factor, the record is clear that asbestos-containing insulation was intended to add value to the realty (DuPont’s facility). Mr. Smith testified that insulation is supposed to prevent the loss of heat and energy. (*Id.* at p. 124/18-21). Mr. Smith also testified that asbestos-containing insulation is used because it is “effective,” and it is industry standard because it is “the best.” (*Id.* at pp. 39/3-14, 39/22-40/6). By reasonable inference, this suggests that asbestos-containing insulation is “effective” at preventing the loss of heat and energy and is the industry standard because it is “the best” at preventing the loss of heat and energy. Clearly, preventing the loss of heat and energy would increase the value of the realty by reducing energy costs.

As to the third factor, the record is clear that the ‘improvement’ in question was meant to be an improvement to real property rather than personalty. To this end, Mr. Smith agreed that the insulation at DuPont-Chattanooga became a part of the factory after it was installed. (*Id.* at pp. 44/20-45/1).

IV. CONCLUSION

The discovery completed to date has failed to produce any evidence that Plaintiff’s Decedent, Nancy Costeloe, was exposed to any asbestos-containing product or material that was distributed or installed by AC&S, let alone with sufficient frequency and regularity necessary to hold AC&S liable. The absence of these critical elements of Plaintiff’s cause of action precludes recovery in this instance.

In the first alternative, the discovery completed to date has failed to produce any evidence that AC&S was negligent in failing to warn about the dangers of asbestos-containing insulation

products. The absence of this critical element of Plaintiff's cause of action precludes recovery in this instance.

In the second alternative, the discovery completed to date indicates that AC&S's installation of insulation at DuPont-Chattanooga constituted an improvement to realty under the Blackacre construction statute of repose, as to which no reasonable jury could disagree. AC&S is therefore entitled to partial summary judgment on the contracting jobs AC&S performed at DuPont-Chattanooga.

WHEREFORE, Defendant, AC&S, Inc. hereby requests that this Court enter summary judgment in their favor as to Plaintiff David Costeloe, Individually and as Personal Representative of the Heirs and Estate of Nancy Costeloe, Deceased. Plaintiff has failed to satisfy several essential elements of proof, making summary judgment proper. In the alternative, AC&S requests that this Court enter partial-summary judgment in their favor on the contracting jobs AC&S performed at DuPont-Chattanooga. AC&S has demonstrated that the "common-sense" improvement to realty test under the construction statute of repose is satisfied as to which no reasonable jury could disagree. AC&S further requests all other appropriate relief.

This the 7th day of April, 2002.

Respectfully submitted,

**Holmes, Brandeis, Elkins,
Smith & Cohen, LLP**

/s/ Andrew Morales
Andrew Morales
Blackacre Bar No. 12121212

Counsel for Defendant
AC&S, Inc.